A DIGEST

OF THE

DECISIONS OF THE JUDICIAL COMMITTEE

AND THE LORDS OF

HER MAJESTY'S MOST HONORABLE PRIVY COUNCIL

IN CASES ON APPEAL FROM COURTS

IN THE EAST INDIES

FROM 1836 TO 1872,

TO BE FOUND REPORTED AT LENGTH IN

MOORE'S INDIAN APPEAL CASES,

VOLS. I TO XIV.

BY

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PREFACE.

THE valuable series of Reports from which this compilation has been prepared having come to an end, it has been thought that a Digest of the Privy Council decisions contained therein will be acceptable to the legal profession generally; and that it will be found especially useful by the numerous practitioners who, from residence in the Mofussil or otherwise, are unable at all times to obtain ready access to the Reports themselves.

MADRAS,
October 1876. } H. J. T.

PUBLISHERS' PREFACE

(To the Third Edition.)

THIS edition is simply a reprint of the previous impression, no alterations or amendments having suggested themselves to the Compiler.

Under special arrangement and with the sanction of the Incorporated Council of Law Reports for England and Wales, we have in active preparation, a Digest of the Law Reports, Indian Appeals, which we hope to issue early next year. It will form a second volume to this Digest and bring down in continuation, the Privy Council decisions to December 1884. Orders for the 2nd volume are being registered for future compliance.

August 1885. H. & Co.

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PARTIES having accounts between them may meet and agree to settle those accounts by the ascertainment of the exact balance, produce vouchers, exchange information, &c., and if it afterwards turn out that there are errors in the account, it is a sufficient ground for opening the account, and setting it right in a Court of Equity. If on the other hand persons meet and agree not to ascertain the balance, but agree to a gross sum as the balance; a sum which one is willing to pay, and the other is content to receive as the result of those accounts; it is either an account stated and settled in the formal sense of that expression, or it is the case of a settlement by compromise. In either case it may be vitiated by fraud, and in either case it is good for nothing, if, from the collusion of the parties it is proved in a Court of Equity that the transaction was not so fairly and so fully understood between the parties, either from the confusion in which it was involved, or from misrepresentations made on the one side or the other, as it ought to have been, and that injustice has been done to either side.—*McKellar* v. *Wallace and another.* Vol. 5, p. 372.

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Whilst certain estates devised by Colonel Skinner to his five sons were under the management of the Executors or Manager appointed by the Colonel's Will, considerable sums, being surplus rents of the devised estates, but not drawn by the devisees, the sons, were laid out in the purchase of additional landed property, and it being contended that these new acquisitions must be regarded in law as accretions to the originally

devised estates and as passing with them under the gifts made by the Will. *Held*, that the purchased estates followed the ownership of the purchase money, which was the absolute property of the five sons in equal shares, and therefore that the fifth share in these purchased estates of one of such sons, deceased, passed under a devise thereof contained in his Will.—*Barlow* v. *Orde and others*. Vol. 13, p. 277.

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ADOPTION.

In a suit for recovery of one moiety of the estate of a hereditary proprietor of large Zemindary property in the Northern division of the Presidency of Madras brought by a second adopted son against an elder adopted son, who, on the death of the Zemindar claimed the whole of his estate as sole heir, asserting the second adoption, if made, to be invalid in law, and that whatever acts the late Zemindar might have done in the second adopted son's favor, being contrary to law, were null and void. *Held*, that as to the validity of a second adoption, the first adopted son still existing, and remaining in possession of his character as a son, the Court had no hesitation in coming to a conclusion adverse to the validity of a second adoption.

In considering whether the title of the second adopted son could be maintained on the ground that it was subsequently recognized by the elder adopted son, and that such subsequent recognition might be considered equivalent to previous assent; the Court considered, that (even if they assumed, what was not by any means clear, that such subsequent ratification would be equivalent for that purpose in Hindoo Law to previous consent,) the circumstances of the case made it impossible for them to maintain his right on this ground.

It appearing, however, that there was some property, both real and personal, of which the Zemindar had the power of disposing; and by an act *inter vivos* without the consent of the elder adopted son;

and the Court thinking that the Zemindar made a gift as far as he could of his property between his two sons. *Held*, that if the elder adopted son took (as the Court considered him entitled to,) the whole ancestral property which the father could not dispose of without his consent he must give up for the benefit of the second adopted son the whole property included in the division to the disposition of which his consent was not necessary.—*Rungama* v. *Atchama and others, and Atchama* v. *Ramanadha.* Vol. 4, p. 1.

In an adoption suit where the appellants' witnesses swear to the different facts necessary to prove an adoption, and on the other hand the respondents produce witnesses who swear to facts inconsistent with such adoption, much must depend upon the probabilities of the case, to be collected from those facts as to which both parties are agreed.

Where the alleged adoptive father who was advanced in years (67 years old) had two wives to whom he had long been married without either of them having had issue, and both of whom were of such an age as to make it in the highest degree improbable that he should ever have by them a son of his body, and who, eighteen years before the alleged adoption, despairing of having such issue, had adopted a boy who had died without issue in the adoptive father's lifetime, the probability of an adoption of some child was considered very strong.

According to the religious tenets of the Hindoos a man's state after death, and his deliverance from a place of suffering called "*put*" depends upon his leaving a son to perform certain rites and ceremonies after his death.

An adoption may be made either by a man in his lifetime, or by one of his wives after his death under a power conferred upon her for that purpose by her husband.—*Huradhun Mookurjia* v. *Muthoranath Mookurjia and others.* Vol. 4, p. 414.

A power to adopt may be given even verbally.—*Soondur Koomaree Debbeea* v. *Gudadhur Pershad Tewaree, and Gudadhur Pershad Tewaree* v. *Soondur Koomaree Debbeea.* Vol. 7, p. 54.

Upon the question of the power of a widow duly authorized to adopt a son to claim under any circumstances her personal rights until she does adopt, that is to say, whether a widow having a power of adoption loses her right to sue in her individual character as widow. The Court entirely agreed with the principles laid down by the Court below, which *held*, that the fact of an authority to adopt a son being possessed by a widow does not supersede and destroy her personal rights as widow, and that those rights continuing of force until an adoption is actually made, there is no bar to her bringing a suit for recovery of her late husband's property.—*Bamundoss Mookerjea and another* v. *Mussamut Tarinee.* Vol. 7, p. 169.

Decision of the lower Court upheld, which dismissed a suit to establish an adoption alleged to have been made under a deed dated the 19th of May 1830, called an *Unoomuttee Puttro*, giving power to adopt, the husband dying within six months after that date, and the adoption set up not having been completed until January 1847, seventeen years after the death of the husband.—*Chundermonee Debia Chowdhoorayn* v. *Munmoheence Debia.* Vol. 8, p. 477.

Decree of the Court of Sudder Dewanny Adawlut at Madras confirmed, that decree affirming the Judgment of the Civil Court of Cuddalore, whereby an adoption was declared proved; although one of the grounds of appeal was to the effect, that the adoption could have no validity on account of the child adopted being the son of a sister of the adopter (Vaisya caste).—*Ramalinga Pillai* v. *Sadasiva Pillai.* Vol. 9, p. 506.

Gour Kishore Acharj Chowdhry, being the owner of considerable estates in Bengal, died in the year 1821, leaving surviving him a widow named *Chundrabullee Debia*, and an only son named *Bhowanee Kishore.* At the time of his father's death *Bhowanee Kishore*, who succeeded as his heir, was about four years of age. He attained, however, his majority and married the appellant *Bhoobun Debia.* He died in the month of August 1840, being then about 24 years old. He left no issue, and *Bhoobun Debia*, his widow, became the heir of his property, as well ancestral as of other estates which had been purchased with his own money during his life. Immediately upon the death of *Bhowanee Kishore* an instrument was set up as being his Will by *Chundrabullee Debia*, his mother, and *Bhoobun Debia*, his widow. By this

instrument power to adopt a son was given to *Bhoobun Debia*, and until such adoption was made the income of the estates was given to *Chundrabullee Debia* and *Bhoobun Debia*. Under this alleged Will *Chundrabullee Debia* and *Bhoobun Debia* took possession of the estates of *Bhowanee Kishore*, and remained in the enjoyment of them for nearly four years. In December 1843, *Bhoobun Debia* professed to exercise the power alleged to have been given to her by the instrument or Will already referred to, and adopted a boy named *Rajendro Kishore*. Upon this a quarrel arose between *Chundrabullee Debia* and *Bhoobun Debia*, and *Chundrabullee Debia* alleged that the supposed Will of *Bhowanee Kishore*, under which she had so long been in possession of half his property, was a forgery, and that *Bhoobun Debia* had no power of adoption. She further set up an instrument called an *Onoomuttee Puttro* or deed of permission, by which she alleged that a power to adopt a son had been given to her by her husband in his lifetime, and during the lifetime of *Bhowanee Kishore*, and which power in the events which had happened she claimed a right to exercise. She accordingly adopted or professed to adopt the respondent *Ram Kishore* as the son of *Gour Kishore*, her late husband. *Bhoobun Debia*, on behalf of *Rajendro Kishore*, her adopted son, having obtained possession of all the property of *Bhowanee Kishore*, the suit in which the present appeal was brought was instituted in 1852, by a next friend of *Ram Kishore* on his behalf against *Bhoobun Debia* and *Rajendro Kishore* and certain other persons, the plaintiff claiming as the adopted son of *Gour Kishore* the whole property ancestral and acquired of *Bhowanee Kishore*, and *Chundrabullee Debia* was made a defendant, instead of suing as plaintiff on behalf of her son, that course being adopted probably with a view to avoid any prejudice which might arise from the inconsistency of her previous conduct with the title now set up for her son. A decree was eventually made in favor of the plaintiff *Ram Kishore* as to the ancestral property of *Bhowanee Kishore*, but not as to his self-acquired property. The case then came before the Judicial Committee of the Privy Council on appeal by *Bhoobun Debia* as representing her own rights and the rights of a son whom she had adopted in lieu of *Rajendro Kishore* who had died, and on a cross-appeal by *Ram Kishore* complaining that the decree in his favor ought to have included the self-acquired as well as the ancestral property of *Bhowanee Kishore*. *Held*, that the alleged Will of *Bhowanee Kishore* was a forgery, and that as no power of adoption had been alleged or proved to have been given by parol, the adoption of *Rajendro Kishore*, and of the son substituted for him, must be held invalid. That it was unnecessary to examine into the genuineness of the *Onoomuttee Puttro* of *Gour Kishore* as at the time when *Chundrabullee Debia* professed to exercise it, the power was incapable of execution. That although there is no doubt that by the decisions of Courts of Justice the testamentary power of disposition by Hindoos has been established within the Presidency of Bengal, yet it would be to apply a very false and mischievous principle if it were held that the nature and extent of such power can be governed by any analogy to the law of England. That in this case there was no room for the application of such doctrines, the instrument in question being merely, what it purported to be, a deed of permission to adopt, and not an instrument of a testamentary character, and that the instrument must be construed and its effect determined in just the same way as if it had been made in one of the provinces of India in which the power of testamentary disposition is not recognized. That it was contrary to all reason and to all the principles of Hindoo Law where the estate of the son being unlimited and that son having married and left a widow his heir, and that heir had acquired a vested estate in her husband's property as widow, for a new heir to be substituted by adoption, who is to defeat that estate, and take as an adopted son what a legitimate son of *Gour Kishore* would not have taken. That the adopted son as such takes by inheritance and not by devise, and the rule of Hindoo Law is that in the case of inheritance the person to succeed must be the heir of the last full owner. That in this case *Bhowanee Kishore* was the last full owner, that his wife succeeded as his heir to a widow's estate, and that on her death the person to succeed would again be the heir at the time of *Bhowanee Kishore*.—*Mussumat Bhoobun Moyee Debia* v. *Ram Kishore*

Acharj Chowdhry and another. Vol. 10, p. 279.

Authority to adopt by a widow conferred upon her by her husband must be strictly pursued, and as the adoption is for the husband's benefit, so the child must be adopted to him, and not to the widow alone.

An adoption by the widow alone will not for any purpose required by the Hindoo Law, give to the adopted child, even after her death, any right to the property inherited by her from her husband.

In order to establish the validity of such an adoption, it is necessary to prove; first, the authority given to the wife to make the adoption; and, secondly, the actual adoption by the widow of the claimant as the son of the deceased husband.—*Chowdry Pudum Singh* v. *Koer Oodey Singh.* Vol. 12, p. 350.

Upon questions of the validity of an adoption made by the widow of the last male Zemindar of Ramnad situate in the *Drávada* country, and as to whether by the Hindoo Law, as current in the *Drávada* country a widow can adopt a son to her husband without his express authority, and, if so, by whose assent that defect of authority must be supplied. *Held*, that according to the law prevalent in the *Drávada* country, and particularly in that part of it wherein the Ramnad Zemindary is situate, a Hindoo widow, not having her husband's permission, may, if duly authorized by his kindred, adopt a son to him. That where the husband's family was in the normal condition of a Hindoo family, *i.e.*, undivided, the question as to who are the kinsmen whose assent will supply the want of positive authority from the deceased husband, was comparatively of easy solution, as in such case the widow under the law of all the schools which admit this disputed power of adoption, takes no interest in her husband's share of the joint estate, except a right to maintenance, and though the father of the husband, if alive, might, as the head of the family, and the natural guardian of the widow, be competent by his sole assent to authorize an adoption by her, yet, if there be no father, the consent of all the brothers, who, in default of adoption, would take the husband's share, would probably be required, since it would be unjust to allow the widow to defeat their interest by introducing a new co-parcener against their will, but that where, as in this case, the widow had taken by inheritance the separate estate of her husband, there was greater difficulty in laying down a rule. That the power to adopt when not actually given by the husband can only be exercised when a foundation for it is laid in the otherwise neglected observances of religious duty as understood by Hindoos. That there appeared no ground for saying that the consent of every kinsman, however remote, was essential. That the assent of kinsmen seemed to be required by reason of the presumed incapacity of women for independence, rather than the necessity of procuring the consent of all those whose possible and reversionary interest in the estate would be defeated by the adoption. That in such a case, therefore, the consent of the father-in-law, to whom the law points as the natural guardian and "venerable protector" of the widow would be sufficient. That it was not easy to lay down an inflexible rule for the case in which no father-in-law was in existence, as every such case must depend upon the circumstances of the family, and that all that could be said was, that there should be such evidence of the assent of kinsmen as would suffice to show that the act is done by the widow in the proper and *bonâ fide* performance of a religious duty, and neither capriciously nor from a corrupt motive. That the rights of an adopted son are not prejudiced by any unauthorized alienation by the widow, which precedes the adoption which she makes. That though gifts improperly made to procure assent might be powerful evidence to show that no adoption was needed, they do not in themselves go to the root of the legality of an adoption, and that inasmuch as the authorities in favour of the widow's power to adopt with the assent of her husband's kinsmen proceed in a great measure upon the assumption that his assent to this meritorious act is to be implied wherever he has not forbidden it, so the power cannot be inferred when a prohibition by the husband either has been directly expressed by him, or can be reasonably deduced from his disposition of his property, or the existence of a direct line competent to the full performance of religious duties, or from other circumstances of his family which afford no plea for a supersession of heirs

on the ground of religious obligation to adopt a son in order to complete or fulfil defective religious rites.—*The Collector of Madura* v. *Moottoo Ramalinga Sathupathy; Anandai and another* v. *Ranee Parvati Vardani Nachear and others, and Ranee Parvata Vardani Nachear* v. *Anandai and another.* Vol. 12, p. 397.

If there is on the one hand a presumption that a childless Hindoo would perform the religious duty of adopting a son, there is, on the other, at least as strong a presumption that a Hindoo father would not break the law by giving in adoption an eldest or only son, or by allowing him to be adopted otherwise than as a *Dwyamushyayana*, or son to both the adoptive and natural father. This latter kind of adoption would not sever the connection of the child with his natural family.—*Nilmadhub Doss* v. *Bishumber Doss and others.* Vol. 13, p. 85.

A Hindoo by a Will gave his wife permission, with the consent of his mother, to adopt one son. An adoption took place with great publicity and formality, and was known to all the members of the family; and for a period of 27 years, the Will was, with certain exceptions, acted upon and recognized by the whole of the family, and the legal *status* of the appellant, the adopted son, was acquired under it with the knowledge of all the members of the family. *Held*, that from all these circumstances arose a very strong presumption in favour of the Will, that, though not conclusive, and though the respondent had a right to call upon the appellant, the adopted son, to prove his title, yet every allowance that could be fairly made for the loss of evidence during this long period, by death or otherwise, every allowance which could account for any imperfection in the evidence, ought to be made, and that in testing the credibility of the evidence actually given, great weight should be given to all those inferences and presumptions which arose from the conduct of the family with respect to the Will, and to the acts done by them under the Will. That the case seemed analogous to one in which the legitimacy of a person in possession was questioned a very considerable time after his possession had been acquired, by a party who had a strict legal right to question his legitimacy. That in such a case the defendant in order to defend his *status* should be allowed to invoke against the claimant every presumption which reasonably arose from the long recognition of his legitimacy by members of the family or other persons. That the case of a Hindoo claiming by adoption is, perhaps, as strong as any case of the kind that can be put, because when, under a document which is supposed and admitted by the whole family to be genuine, he is adopted, he loses his rights which he would have in his own family, and it would be most unjust after long lapse of time to deprive him of the *status* which he has acquired in the family into which he has been introduced, except upon the strongest proof of the alleged defect in his title.—*Rajendro Nath Holdar* v. *Jogendro Nath Banerjee and others.* Vol. 14, p. 67

See EVIDENCE,
LOCUS STANDI,
SISTER'S SON.

ADVERSE POSSESSION.

An endowment being a perpetual endowment, and the duty of Government to preserve its application to the right use being a public and perpetual duty, and the plaintiff having been appointed *Mutwaly* by the Government, no right of action could accrue to him as against a defendant said to be improperly in possession of a portion of the *Wukf* property, until his appointment; and the defendant could acquire no right by adverse possession against the Government, whose procurator the plaintiff was, until at least twelve years had elapsed from his appointment.—*Jewun Doss Sahoo* v. *Shah Kubeer Ooddeen.* Vol. 2, p. 390.

Where a party held possession of certain landed property, which belonged to his wife's mother during her life, and after her death to his wife, whilst the mother-in-law and wife survived, and as long as his daughters (who subsequently claimed such property,) lived with him. *Held*, that as long as the mother-in-law and wife survived, and whilst his daughters lived with him, he would naturally and necessarily be in possession of the property. That possession was nothing at all under these circumstances, and that possession was just as consistent with the title of his wife's mother, and of his own wife, and of his daughters, as it was with his own.—

Kadir Buksh Khan v. *Mussumatain Fusseeh Oonnissa and another.* Vol. 5, p. 413.

See HEREDITARY OFFICES,
LIMITATION,
MORTGAGE,
POSSESSION.

ADVERSE TITLE.

See ACQUIESCENCE.

ADVOCATE.

An advocate having been guilty of a grave irregularity, well deserving of censure, yet having been acquitted of having acted with the *malus animus* which is a necessary ingredient in every fraudulent act, and therefore, his conduct, though censurable, not bearing the character which the heavy sentence passed on him would stamp upon it, an order of the High Court of the North-Western Provinces suspending him from practice for alleged professional misconduct, with liberty to apply at the expiration of five years for permission to resume practice, was reversed, and a rule calling upon him to show cause was discharged.—*Newton* v. *The Judges of the High Court, North-Western Provinces.* Vol. 14, p. 267.

See UNDERTAKING.

ADVOCATE-GENERAL.

A private individual coming into Court and desiring that a fund devoted to charitable purposes may be applied in a particular way, which he says is the proper way, the Advocate-General is entitled to appear and be heard in the matter under 53, Geo. 3, Cap. 155, Section 111.—*Attorney-General* v. *Brodie.* Vol. 4, p. 190.

AGENT.

An instrument executed by an agent for an absent principal. *Held*, under the circumstances, to be a contract incomplete in itself, and conditional.—*Fischer* v. *Kamala Naicker.* Vol. 8, p. 170.

A Banian pledged for his own private purposes a Bill of Lading entrusted to him by his employers for the especial purpose of getting delivery of the goods mentioned therein, and the question raised in an action of trover for recovery of the goods, was, whether the pledge was protected by the Factor's Act (5 and 6, Vic. Cap. 39, extended to India by Act 20 of 1844). The Court below thought that the facts raised the inference that there was *malâ fides* on the part of the Banian in dealing as he had done with the goods, and that the appellant (the pledgee) had notice that the pledge was without authority from the Banian's employers, and not *bonâ fide*, and a question of misdirection having been raised. *Held*, that the Lower Court was correct in making it the cardinal question in the case whether the circumstances were such as that a reasonable man of business, applying his understanding to them, would certainly know that the Banian had not authority to make the pledge, if not, also, that he was acting *malâ fide* in respect thereof, against his principals.

The Jury, or the Judge acting as a Jury, must, in order to bring the case within the 3rd and take it out of the 1st Section of the Factor's Act, categorically find the facts of want of good faith, and of notice to the lender of want of authority in the agent, or that he is acting *malâ fide* in the transaction against his principal.—*Gobind Chunder Sein* v. *Ryan.* Vol. 9, p. 140.

See ARBITRATION,
BILL OF EXCHANGE,
EVIDENCE,
FACTOR,
GOVERNMENT OFFICER,
NEGOCIABLE INSTRUMENT,
PRINCIPAL AND AGENT,
SOVEREIGN POWER,
TORT.

AGREEMENT.

See COMPROMISE,
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AGREEMENT FOR PARTITION.

See JOINT UNDIVIDED HINDOO FAMILY.

ALIENS.

The law incapacitating aliens from holding real property to their own use, and transmitting it by descent or devise has never been introduced into Calcutta.

There appears still less reason to hold that it has ever obtained a footing in the Mofussil.

There has been no such an introduction of the English Law generally, that those parts which have been introduced draw along with them the law touching aliens.

It cannot be maintained that there is no possibility of introducing the English Laws at all without introducing every part of them, for, notwithstanding the extent to which the laws have been introduced it is allowed on all hands that many parts of them are still unknown in our Indian dominions.

Freeman v. *Fairlie* only decided that the estate in land and tenements of a British subject in Calcutta was of such a nature as to descend to him according to the English Law of succession--that it was freehold of inheritance.—*Mayor of Lyons* v. *East India Company*. Vol. 1, p. 175.

ALIENATION.
See CUTTOOGOOTAGA TENURE,
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WIDOW.

ALLUVIAL LANDS.

Held, that where the land in dispute was inundated about the year 1787, and remained covered with water until 1801, when it became partially dry until the year 1814, when it was again inundated, after which it again re-appeared above the surface of the water, and by the year 1820 had become very valuable land; the question was, to whom did the land belong before the inundation? and, that whoever was the owner then, remained the owner whilst it was covered with water, and after it became dry, and, that the question between the parties was not as to alluvial land in the sense of land gradually gained from the river, and which, having no owner would belong by way of accretion to the lands of the adjoining proprietor.—*Mussumat Imam Bandi and another* v. *Hurgovind Ghose*. Vol. 4, p. 403.

Where the accretion (granting it to be gradual) is one which has been contributed to, or even purposely contributed to, by the act of the defendant, that fact will not take the matter out of the ordinary law with respect to the accretion. If there were a gradual accretion it will be dependant upon ordinary law.

Assuming that the accretion was such as to belong to the proprietor to whom the adjacent land belonged. *Held*, that the owners of that land, portion of the bed of the River Hooghly, now constituting dry land, were the respondents, the East India Company.—*Doe dem Seebkristo and others* v. *East India Company*. Vol. 6, p. 267.

In the case of a claim to land washed away and reformed in the bed of a navigable river, the ownership of the soil of which is not commonly in the riparian proprietor of its banks, and which is not proved to have belonged to the predecessor in title of either disputant; the reforming of land in such a stream after a considerable interval and frequent floods is not *primâ facie* to be ascribed to a loss from any particular portion of territory, nor is the land which has been removed by a sudden avulsion reclaimable unless the circumstances supply evidence of identity.

A detached chur, independent of usage, in such a stream would belong to neither riparian proprietor, and the circumstance that it was subtended by the land of one would not be enough to entitle him to it.

The title by accretion to a new formation generally, is not founded on equity of compensation, but on a gradual accretion by adherence to some particular land which may be termed the nucleus of accretion. The land gained will then follow the title to that parcel to which it adheres.

It is not competent in a suit brought to recover land claimed as alluvial and contained within the boundaries given in a map annexed to the plaint, and where the cause has been decided on that title, for the plaintiffs at the hearing of their appeal to raise a different case, *viz.*, one simply of ownership of the site of the lands reformed. They must succeed or fail on their title to the land as alluvial.—*Sree Eckowrie Sing and others* v. *Heeraloll Seal and others*. Vol. 12, p. 136.

Under Section 2 of Bengal Regulation XI of 1825, to the effect that "whenever any clear and definite usage "of *Shekust pywust* respecting the dis- "junction and junction of land, by the "encroachment or recess of a river "may have been immemorially estab- "lished for determining the rights of "the proprietors of two or more con- "tiguous estates divided by a river, "(such as that the main channel of the "river dividing the estates shall be the "constant boundary between them, "whatever changes may take place in "the course of the river, by encroach- "ment on one side, and accession on the "other), the usage so established shall "govern the decision of all claims and "disputes relative to alluvial land be- "tween the parties whose estates may "be liable to such usage." *Held*, that it lay upon the party to whose title the custom was essential to prove such custom.—*Rae Manick Chund* v. *Madhoram and others.* Vol. 13, p. 1.

In a case of disputed boundaries in respect to land which had been submerged and partially washed away by the River Ganges, and afterwards reformed on the original site, the plaintiff saying in effect, "this was my property, the "Ganges which swallowed it has again "yielded it up, and I claim my property, "which, having been buried and lost to "sight has again re-appeared." *Held*, that it is a principle not merely of English Law, or peculiar to any system of Municipal Law, but a principle founded in universal law and justice, that whoever has land, wherever it is, whatever may be the accident to which it has been exposed, whether it be a vineyard which is covered by lava, or ashes from a volcano, or a field covered by the sea, or by a river, the ground, the site, the property, remains in the original owner. That there is another principle recognized in the English Law, derived from the Civil Law, that where there is an acquisition of land from the sea or a river by gradual, slow and imperceptible means, there, from the supposed necessity of the case, and the difficulty of having to determine, year by year, to whom an inch or a foot or a yard belongs, the accretion by alluvion is held to belong to the owner of the adjoining land. That the 4th Section of Bengal Regulation XI of 1825, as to land gained by alluvion, &c., did not govern this case. The Court desiring it to be understood that they did not hold that property absorbed by a sea or river was under all circumstances and after any lapse of time to be recovered by the old owner, as it might well be, that it might have been so completely abandoned as to merge again, like any other derelict land, into the public domain, as part of the sea or river of the State, and so liable to the written law as to accretion and annexation, and that the property claimed in this suit being capable of identification, it having been the property of the plaintiff when it was submerged, it never having been abandoned or derelict, and it having now emerged from the Ganges, was still the property of the plaintiff.—*Lopez* v. *Muddun Mohun Thakoor and others.* Vol. 13, p. 467.

In a dispute between two riparian proprietors, holding estates respectively on the opposite sides of an Indian river, concerning certain churs formed in the course of that river, each landed proprietor maintaining that he was entitled to those churs as appertaining to his estate. *Held*, that no sufficient explanation had been given of a very long delay on the part of the plaintiff in instituting the suit. That if some presumption usually arises against those who slumber on their rights, it is the stronger when applied to rights of this description, the subject-matter of which is in a constant state of change, and the proof of which is rendered more than usually difficult by lapse of time. That the hardship might be great of calling upon persons who have been long in undisturbed possession of such property for strict proof of their title after landmarks may have been washed away, or witnesses may have died. That in this case there had also been a delay of nearly ten years wholly unexplained in the prosecution of the appeal. That plaintiff had failed to prove his case. That he had not proved the lands which had reformed, if lands had reformed in the bed of the river, to have been the same as those which belonged to his predecessors, and had been diluviated, and that he had failed also to prove his title upon the ground of the *locus in quo* being an accretion to any lands of which he was in possession.

Whether the 2nd Clause of the 4th Section of Bengal Regulation XI of 1825 applied, or, whether the 5th Clause of the same section applied, it was equally essential to the maintenance of the plain-

tiff's case that he should establish the identity of the land which he had lost.—*Sham Chand Bysack* v. *Kishen Prosaud Surma.* Vol. 14, p. 595.

See LOCAL ENQUIRY.

AMARAM TENURE.

Amaram and *Kattubady* are grants which are resumable.

Amaram grants, in the absence of all evidence to the contrary, are resumable grants.

The law has not prescribed any particular form in which resumption shall take place, but justice requires that a resumption shall take place with due publicity, and upon reasonable notice.—*Unide Rajaha Raje Bommarauze Bahadur* v. *Penmasamy Venkatadry Naidoo and others.* Vol. 7, p. 128.

AMENDMENTS.

See PRACTICE,
SPECIAL LEAVE TO APPEAL.

ANANAT DUFTER.

The *Ananat Dufter* was an office for the deposit of Revenue Records during the Mahomedan rule.—*The Bengal Government* v. *Nawab Jafur Hossein Khan.* Vol. 5, p. 467.

ANCESTRAL DEBTS.

See MORTGAGE.

ANCESTRAL PROPERTY.

The term "all ancestral property" in a *Ruffanamah* or agreement made between the respondent and his brothers, and which agreement purported to be made to settle a long pending dispute between them regarding their respective shares in their father's property and to settle all family differences. *Held*, to be not confined to such property, if any, as the father had derived from his father, or from any ancestor, but that *ancestral* was here employed in the sense of *paternal*, that is, as meaning property of the father in whatsoever manner, or by whatsoever title the father had acquired it, and therefore, that *ancestral property* meant property derived from the father, at least immoveable property.—*Rajmohun Gossain and another* v. *Gourmohun Gossain.* Vol. 8, p. 91.

The plaintiffs contended, that a certain estate, a Talook with accretions which, beyond all reasonable question, had been made by the investment of the profits of that estate, was an ancestral estate which descended to them and the defendant, who was a cousin, in co-parceny, it being admitted that by the Common Law of Hindostan, that is, the Hindoo Law, the descent is in co-parceny, where no other custom is proved. The plaintiff's case was, that the property was ancestral property which had belonged to their grandfather, one *Hurjee*, and descended from *Hurjee* upon his two sons, *Bacharam Chowdhry* and *Sheebloll*, the fathers of the respective parties, and, the case on the other side being, that there was no foundation whatever for this assertion; that the property was not ancestral property, that the grandfather never had any property at all, and that it was an acquisition of *Bacharam Chowdhry* himself under a grant made to him individually, or, as would be said in English Law, an acquisition by him by purchase, so that he became a new root of descent, and so that the common title alleged to be derived from the grandfather had no existence, and further, that, admitting it to be *Hurjee's* property, and in that sense ancestral property, it was property which descended to *Bacharam* as the eldest male heir, by reason of its being subject to a custom of *primogeniture*. *Held*, that, it being proved that it was *Hurjee's* property, and that *Bacharam* was entitled by descent, it followed that unless there was something to exclude it, that he would not be entitled to it himself, but that he and his brother would succeed to it as co-parceners. That there was nothing to alter the right which existed at the time when the descent was cast. That the fact that the settlement was made in the name of one brother, and that he had contrived to be solely registered, afforded no conclusive evidence against the title of the shareholder, and that the mere fact that one of the two brothers was registered so as to be the proprietor to the outer world was not of very great weight, there having been beyond all question a continuous enjoyment by both upon equal terms. That the case of family and local customs as to the right of *primogeniture* had failed, and, that being so, and it being substantially admitted that there was no other source from

which the acquisitions could be made, the decree of the Court below, to the effect, that, the estate was inherited by *Bacharam Chowdhry* and *Sheebloll*, that it was their joint estate, and not the self-acquired property of the former, that the subsequent acquisitions of property had been made with the profits of the estate and with the joint funds of the whole family, which was joint and undivided, was correct.—*Umrithnath Chowdhry* v. *Goureenath Chowdhry and others.* Vol. 13, p. 542.

See HINDOO LAW,
JOINT UNDIVIDED HINDOO FAMILY,
POLLIAM TENURE,
SELF-ACQUIRED PROPERTY,
WIDOW,
WILL.

ANNUITY.

The Judicial Committee of the Privy Council, not without great doubt and hesitation, came to the conclusion, that, according to the original constitution of the Madras Civil Service Annuity Fund, as established in 1825, an annuitant was not entitled to have refunded to him the excess of his subscriptions to the fund beyond one-half of the value of his annuity: and they very much inclined to the opinion that the contract did not provide for such an occurrence, and that in order to determine the rights of the parties, subsequent occurrences must be looked at, not indeed for the purpose of varying the contract, but for the purpose of supplying what had been left unprovided for by it. Further, *Held*, that the case did not appear to be one to which the doctrine of Resulting Trust could be applied. That the ultimate beneficiaries under the trust had authorized the trustees to hold out to the prior beneficiaries advantages which were not warranted by the Trust, and had thereby altered the position of the prior beneficiaries, and that, under the circumstances, both the trustees and the ultimate beneficiaries must be liable to make good to the prior beneficiaries the advantages which had been so held out to them. That, whatever might be the case at law, there was, under the circumstances of the case, an equity by which the East India Company were affected. That the East India Company, though not bound by any positive alteration of the rules, were precluded by their conduct from disputing the right of the plaintiff to have the excess of his subscription beyond the half value of his annuity refunded to him.—*The East India Company* v. *Robertson and others.* Vol. 7, p. 361.

APPEAL.

Not only in England, but throughout the dominions of the Crown of Great Britain governed by the Law of England, no right of appeal in Felonies has ever existed.

Nor in any instance has the Crown ever by the exercise of its prerogative granted leave to appeal.—*The Queen* v. *Eduljee Byramjee and others.* Vol. 3, p. 468.

Taking the terms of the Charter (Bombay, dated December 8th, 1823.) into consideration, and having regard to the origin of that Charter, *viz.*, that it was not a mere act of the Crown by force of the prerogative, but in execution of a power conferred upon the Crown by Statute, the Charter by its terms in execution of that Statute does not reserve a power to the King in Council of reviewing a determination of the Court below in a criminal case, the Court below having rejected the application for such a review.—*The Queen* v. *Alloo Paroo and others.* Vol. 3, p. 488.

Act 3 of 1843 rendered final the decision of a single Judge as to the admissibility of a special appeal as far as the Sudder Court was concerned, but the finality created by the Act must be limited by the jurisdiction of the legislative power which created it, and the order of a single Judge rejecting a special appeal was held to have been properly made the subject of an appeal to the Judicial Committee of the Privy Council.—*Modee Kaikhooscrow Hormusjee* v. *Cooverbhaee and others.* Vol. 6, p. 448.

An appeal having been restored, and six months having elapsed without appellant having complied with the terms on which the conditional order restoring the appeal was made, and, in particular, had not given security for costs as therein prescribed, or any security whatever, three months further time granted upon payment of the costs of the application, a peremptory order being made that the appeal stand

dismissed unless within three months the security be perfected as previously ordered.—*Ranee Hurrosoondree Dibiah* v. *Rajah Pran Kishen Sing.* Vol. 7, p. 16.

Application granted, upon terms, to restore an appeal dismissed in consequence of no effective steps having been taken to prosecute the same, there being infants whose interests were concerned.

By the dismissal of the appeal the security given in India, *Held*, to have gone.—*Ranee Birjobuttee and others* v. *Pertaub Sing and others.* Vol. 8, p. 160.

The grounds upon which the Sudder Court ought to proceed with reference to giving or refusing leave to appeal to Her Majesty in Council. *Held*, to be regulated by the order in Council of the 10th April 1838, by which order the Sudder Courts were not to give leave to appeal unless the petition were presented within the time limited by the order, nor unless the value of the matter in dispute amounted to the sum of Rupees 10,000 at least.—*Gooroopersad Khoond* v. *Juggutchunder and another.* Vol. 8, p. 166.

Upon an application for leave to appeal from the proceedings and sentence of a Native Criminal Court, which had been confirmed on appeal by the Sudder Nizamut Adawlut in Bengal, in a matter and under circumstances which it was alleged would enable a party to obtain redress in a Court of Error in England, and upon which application the Judicial Committee of the Privy Council considered that the questions for decision were, whether there existed on behalf of the Crown a prerogative right of appeal even in matters of criminal jurisdiction; and, secondly, whether it was a proper case in which the authority of the Crown should be interposed for the purpose of doing justice; the Court, whilst desirous that no expression should fall from them which in the slightest degree would throw doubt on the existence of that prerogative. *Held*, that they did not think it necessary on this occasion to enter minutely into the considerations upon which the prerogative of the Crown was founded, and that it would suffice for the purposes of the case to assume that it did exist, and, consequently, that it was in the power of the Judicial Committee of the Privy Council, exercising that prerogative right under the Crown, so to advise Her Majesty, if they should think an appeal ought to be allowed in the case. And further, that as to the merits of the case, they had come to the conclusion that justice had not been very well administered in the case. That supposing it had been a civil and not a criminal case they would have had no hesitation in recommending to Her Majesty to allow an appeal for the purpose of considering the proceedings, and of doing justice to the party complaining, but that as it was a criminal case it was subject to very different considerations. That by granting an appeal is meant an examination of the whole of the proceedings, and not simply the investigation of any legal question which may have arisen, and that it is for the purpose of examining the whole of the evidence, and the whole course of the proceedings upon the trial, to enable the Court to come to a conclusion upon the merits. That under the existing circumstances the Court could not advise Her Majesty to admit the appeal, but they doubted not justice would be done, because they would suggest that an application should be made to the constituted authorities who had the power to afford a remedy, though in a different way, and they doubted not that when it was represented to those authorities that the suggestion emanated from the Judicial Committee of the Privy Council, they would not be loth to examine into the circumstances of the case, or to do that which justice required.—*The Queen* v. *Joykissen Mookerjee.* Vol. 9, p. 168.

The words in paragraph 4 of Section 4 of Act 16 of 1853, to the effect that "provided always that no such special "appeal shall lie, nor shall any such "decision be reversed, altered or re-"manded by any of the said Sudder "Courts upon the ground that the deci-"sion of any question of fact is contrary "to or not warranted by the evidence "duly taken in the cause, or any pro-"bability deduced from the record," should be carried to their full legitimate extent, and no appeal should be allowed on account of difference of opinion as to the value of evidence.

The Sudder Dewany Adawlut of Madras having held that what was complained of was not a finding of fact, but an inference of law, and accordingly allowed a special appeal, the Judicial Committee of the Privy Council concurred in that view.—*Sevvaji Vijaya Rag-*

hunadha Valoji Kristnan Gopalar v. *Chinna Nayana Chetti.* Vol. 10, p. 151.

See CHARTER,
CONSOLIDATION OF SUITS AND APPEALS,
COSTS,
CROSS-APPEAL,
EVIDENCE,
INSOLVENCY,
JURISDICTION,
LIMITATION,
LOCUS STANDI,
MASTER IN EQUITY,
MOONSIFF,
PRACTICE,
SECURITY FOR COSTS,
SPECIAL LEAVE TO APPEAL,
UNAVOIDABLE ACCIDENT,
UNDERTAKING.

APPEALABLE VALUE.

Where an appeal is from the whole decree, and the decree has given an amount including interest up to the date of the decree, which exceeds Rupees 10,000, it is clear that the matter which is in dispute in the appeal must exceed the sum of Rupees 10,000, for the question to be tried upon the appeal must be, whether the decree is or is not right, that is to say, whether the decree has or has not properly ordered payment of a sum exceeding Rupees 10,000; where therefore at the date of the judgment the sum which is recoverable under the decree of the Sudder Court is an amount exceeding Rupees 10,000: the case falls within the terms of the order in Council. The Court, however, must not be understood to intimate that the Sudder Courts ought to give leave to appeal in cases in which the specified amount of Rupees 10,000 could only be realized by the addition of interest subsequent to the decree. Such cases must rest in their discretion.

In a case in which the party applying for leave to appeal claims to be entitled to an estate, subject only, as he contends, to the payment of a fixed annual rent of Rupees 64, the plaintiff in the suit, however, who was in possession of the judgment of the Court below, and who would be the respondent upon the appeal, claiming the right to set upon the estate any rate which he might think fit. *Held*, that either the value in dispute in the appeal must be considered to be Rupees 10,000, within the meaning of the order in Council, or, if not, that it was within the discretion of the Judicial Committee of the Privy Council whether leave should or should not be given, and that, without deciding whether the case fell within the meaning of the order in Council or not, leave to appeal would be given.—*Maharajah Sutteeschunder Roy* v. *Guneshchunder and others.* Vol. 8, p. 164; *Sreemutty Ranee Surnomoyee* v. *Maharajah Sutteeschunder Roy.* Vol. 8, p. 165; *Gooroopersad Khoond* v. *Juggutchunder and another.* Vol. 8, p. 166. *See* also *Mohunlall Sookul and another* v. *Beebee Doss and others.* Vol. 8, p. 193.

The costs of a suit are no part of the subject-matter in dispute; if they were allowed to be added to the principal sum claimed, it would be in the power of every litigant by swelling the costs to bring any suit up to the appealable value.—*Doorga Doss Chowdry* v. *Ramanauth Chowdry and others.* Vol. 8, p. 262.

Appeal allowed, on terms, where the value of the property was laid by the plaintiff at Rupees 7,182 odd, three times the amount of the annual *jumma* of the land, in order to fix the amount of the stamp to be used on the plaint, although the purchase money paid by the Petitioner amounted to Rupees 19,000: there being depositions as to the value of the property; subject, as the application was *ex parte*, to the order admitting the appeal being dismissed on the application of the respondent.—*Gourmoney Debia* v. *Khaja Abdool Gunny.* Vol. 8, p. 268.

The terms of the Regulation X of 1829, upon the subject of value should be carefully attended to.

Respondents' application that they might be at liberty to go into evidence on the question of value, rejected, the Court not being disposed to deviate from the original order, which was carefully and designedly confined to evidence to be adduced by the appellants, with a view to prevent the introduction, for the purpose of a mere fiscal regulation, of a contested issue on the question of value, a result which ought in all cases, as far as justice will permit, to be avoided.—*Mohunlall Sookul and others* v. *Bebee Doss and others.* Vol. 8, p. 492.

Upon the hearing of an appeal; *Held*,

that it would be very prejudicial to the appellant to allow, at this stage of the appeal, an objection urged to the right of appeal on the ground of the want of appealable value. That if there was any foundation for such objection it ought to have been taken when the petition of appeal was lodged, which would not only have saved expense, but would have given an opportunity to the appellant to have shown that there was nothing in the objection.—*Nilmadhub Doss* v. *Bishumber Doss and others.* Vol. 13, p. 85.

See APPEAL,
CHARTER,
PRACTICE,
SPECIAL LEAVE TO APPEAL.

APPEARANCE.

See PRACTICE.

APPEARANCE, DEFAULT IN.

See PRACTICE.

APPROPRIATION.

Held, in a case as to the construction of a Kararnamah, that the course to be adopted was the ordinary one, *viz.*, that payments should be applied in the first instance to interest, and to principal only so far as those payments exceeded the interest due.—*Bamundoss Mookerjea* v *Omeish Chunder Raee and others.* Vol. 6, p. 289.

ARBITRATION.

The Court, being of opinion that, (whatever might be the rule in case of an effectual reference to arbitration and an award properly so considered), having regard to the Bombay Regulations of 1827, and the undoubted facts of the case, an effectual reference to arbitration, and an award properly to be so considered, did not exist in the case before them. Upheld the decision of a Sub-Collector, superseding that of a Punchayet, upon a boundary question.—*The Mokuddims of Kunkunwady* v. *The Enamdar Brahmins of Soorpal.* Vol. 3, p. 383.

The Legislature of India, by Bombay Regulation No. VII of 1827, meant distinctly to prescribe that any deed of reference under which an award was to be made, to have the full force of a decree of the Zillah Court, should contain all those matters which are specified in the Regulation; and no time being specified in a deed of submission within which the award should be made, the award thereunder, though it may be a good one itself, cannot have the force which this Regulation would have given it if the reference had contained all the requisites which the sections specify; and the consent of the parties to waive one of the conditions which is required in the Regulation can give no jurisdiction to the Zillah Court, so as to make the award have the force of a decree of that Court.—*Nusserwanjee Pestonjee* v. *Meer Mynoodeen Khan Wullud Meer Sudroodeen Khan Bahadoor.* Vol. 6, p. 134.

In a suit wherein the respondent pleaded (amongst other things) that he ought not to be bound by a certain award, on the ground that he was not a party to, nor had signed the agreement of reference to arbitration, which had been entered into by his Vakeel on his behalf. *Held*, that, in the absence of all positive law to the contrary, the respondent was just as competent to bind himself by a duly authorized agent, as he was to sign the consent with his own hand, and, that the authority not being disputed, this objection to the award could not be maintained. That in the examination of questions of this kind the broad principles of justice and equity should be looked to, and that whilst due deference should be paid to the Regulations, which in part constitute the law of India, mere technical objections, which affect not the merits of the case, should be discouraged, and the invention of new grounds of dispute, which have not occurred in the course of the litigation, and which were not even mentioned at the commencement of it as the cause for the promotion of the suit, should be more especially discountenanced; and further, that the *onus probandi* of an averment to the effect that a consent to arbitration was not a willing consent, but obtained by threats, and through undue influence exerted by persons in authority, must necessarily fall upon those who make it.—*The Zemindar of Ramnad* v. *The Zemindar of Yettiapooram.* Vol. 7, p. 441.

Sections 312 and 314 of the Code of Civil Procedure (Act 8 of 1859) clearly import that the parties must either name

the arbitrators, or consent to the nomination of them by the Court; and the Code gives no authority to the Court to force upon a reluctant party the decision of any question in the cause by arbitrators selected at its discretion.

Decree based upon an award by arbitrators nominated by the Judge of the Civil Court of Lucknow, and to whom appellant refused to agree, set aside, the Court being of opinion that the defect in nomination had not been cured by any waiver to be implied from the acts of the appellant.—*Sheonath* v. *Ramnath.* Vol. 10, p. 413.

According to the proper construction of the Civil Procedure Code (Act 8 of 1859) when persons, under and in conformity with Section 327 thereof, have agreed to submit the matter in difference between them, to the arbitration of one or more specified persons, no party to such an agreement can revoke the submission to arbitration unless for good cause, and a mere arbitrary revocation of the authority is not permitted.

Objection that the Civil Court of Calicut had no jurisdiction to direct the submission to arbitration to be filed under the provisions of Section 326 of the Civil Procedure Code, one of the parties thereto alleging that he had before such direction revoked the submission to arbitration, overruled.—*Pestonjee Nussurwanjee* v. *Manockjee and others.* Vol. 12, p. 112.

ARBITRATORS.

See ARBITRATION,
EXECUTION.

ARREST.

See FALSE IMPRISONMENT,
TRESPASS.

ARYA BRAHMINS.

Appellants, *Arya Brahmins*, settled at *Rameswarum*, an island in the Presidency of Madras, claimed to have the hereditary right of administering *Purohitam*, or religious rites, to 17 classes of pilgrims, who resort to the great pagoda and other temples on that island, and to the fees paid, or presents offered, by the pilgrims resorting to the shrine. *Held*, that the appellants had failed to support their claim by any sufficient evidence.—*Ramasawmy Aiyan and others* v. *Venkata Achari and others.* Vol. 9, p. 344.

ASSESSMENT, EXEMPTION FROM.

See LA KHIRAJ LANDS,
RESUMPTION OF LANDS.

ASSETS.

See PARTNERSHIP.

ASSIGNEE.

See EVIDENCE,
INSOLVENCY.

ASSIGNMENT.

A sum of £2,500, which by virtue of Act 6, Geo. 4, Cap. 85, was payable to the legal personal representatives of a Puisne Judge of the Supreme Court of Madras in the event of his death while in possession of the office of Judge. *Held*, to be part of the estate of the deceased Judge, precisely in the same way and precisely of the same description as if it had been a Policy of Insurance upon his life; that is to say, a certain sum of money to which he would be entitled upon the contingency of a certain event, over which he had complete power of disposition by assignment in his lifetime, or by testamentary disposition, if he thought fit to exercise the power in that way.

The assignment of such a sum during lifetime is not against public policy.

By upholding such an assignment none of the doctrines whereupon the decisions against the assignment of salaries by persons filling public offices have been founded, are in the slightest degree controverted.—*Arbuthnot and others* v. *Norton.* Vol. 3, p. 435.

ASSUMPSIT.

See LIMITATION.

ATTACHMENT.

In a case of unlawful attachment the aggrieved party is neither bound to accept permission to use his own property, nor if he accepts such permission will he lose his right of action.

The proposition that a man whose possession is wrongfully invaded ought

to give effect to that invasion, because it is made under colour of legal process, by removing the lock of his own store-house, is untenable.

If it be important in India to check any tendency to resist the execution of legal process, it is hardly less important to maintain the principle that they who misuse legal process are responsible for the consequences of that misuse.—*Mudhun Mohun Doss and another* v. *Gokul Doss.* Vol. 10, p. 563.

See EXECUTION,
PROPERTY,
SALE AFTER ATTACHMENT,
TORAS GARAS,
TORT.

ATTORNEY.

Upon an appeal by certain attornies practising in the Supreme Court of Bombay against an order of that Court for the admission of the respondent to practice as an attorney, solicitor and proctor thereof, coming on for hearing. *Held*, that the order was not of the nature of a judgment or determination, or an appealable grievance within the Charter, (Bombay,) but that under the general powers of 3 and 4, Will. 4, Cap. 41, and the terms of the reference it was competent to the Judicial Committee of the Privy Council to advise Her Majesty to grant the appellants leave to appeal, which was accordingly done.

Under the Charter and Letters Patent constituting the Supreme Court of Bombay, made by His late Majesty George the Fourth under the authority of 4, Geo. 4, Cap. 71, the Judges of that Court were not competent to admit as an attorney of the Court a person who was not an attorney *bonâ fide* practising as such in the Court of the Recorder of Bombay at the time of the publication of the Charter, nor had been admitted as an attorney or solicitor in one of Her Majesty's Courts at Westminster.—*Morgan and others* v. *Leech.* Vol. 2, p. 428.

See AGENT.

AUCTION.

See SALE FOR ARREARS OF RENT,
SALE FOR ARREARS OF REVENUE.

AUCTION PURCHASER.

See RESUMPTION OF LANDS,
SALE FOR ARREARS OF REVENUE,
TALOOKDARY TENURE.

AUCTION SALE FOR ARREARS OF REVENUE.

See ENHANCEMENT OF RENT,
SALE FOR ARREARS OF REVENUE.

AUTHORITY.

See PRINCIPAL AND AGENT.

AVERMENTS.

See ARBITRATION,
EVIDENCE,
PRACTICE.

AVOIDANCE OF CONTRACT.

See DURESS.

AWARD.

The operation of Act 13 of 1848 is limited to awards made by the Collectors under Bengal Regulations, VII of 1822, IX of 1825, and IX of 1833, which gave to the revenue authorities judicial power to determine certain questions of possession and other matters, with a right of appeal to the regular Courts against their awards.—*Jowala Buksh* v. *Dharum Singh and others.* Vol. 10, p. 511.

See ARBITRATION,
BOUNDARY SUIT,
EXECUTION.

BABOOANA.

Certain allowances by way of maintenance made to the junior members of a Hindoo family.—*Baboo Beer Pertab Sahee* v. *Maharajah Rajender Pertab Sahee.* Vol. 12, p. 1.

See RAJ.

BANDHOO.

Bandhoo seems to be sometimes used as equivalent to "kinsmen" generally, but in the 6th Section of the Second Chapter of the *Mitacshara* it may be taken, as defined elsewhere by the *Mitacshara* itself, to import kinsmen springing from

a different family (and therefore opposed to *Gotraya* or *Gentiles*), and connected by funeral oblations.

The text quoted in the 6th Section of the Second Chapter of the *Mitacshara* as to the three kinds of classes of *Bandhoos* does not purport to be an exhaustive enumeration of all *Bandhoos* who are capable of inheriting: it is used simply by the author of the *Mitacshara* as a proof of his proposition, that there are three kinds of classes of *Bandhoos;* and all that he states further upon it is, the order in which the three classes take, *viz.*, that the *Bandhoos* of the deceased himself must be exhausted before any of his father's *Bandhoos* can take, and so on.

The maternal uncle of the father is a *Bandhoo* of the father, and, failing the *Bandhoos* of the deceased, the *Bandhoos* of the father are entitled to inherit.—*Gridhari Lall Roy* v. *The Bengal Government.* Vol. 12, p. 448.

BANKRUPTCY.

See EVIDENCE, INSOLVENCY.

BARRISTER.

See ADVOCATE, UNDERTAKING.

BENAMEE.

The question raised by the suit in the Court below, and by the appeal, being, whether a certain talook situate in the district of Hoogly in Bengal, which was purchased by *Royaram Gosain* many years before his death, and previously to the birth of his son, the appellant, in the name of his infant son, the respondent, did or did not at the time of his death form part of the real estate of *Royaram Gosain*, so as to pass to the appellant and respondent jointly under a general devise to them contained in his Will, or descended to them as joint heirs in case of intestacy. *Held*, that the purchase was a *Benamee* purchase, that the party in whose name it was made was a trustee for the father, and that the property in question was part of the father's estate at the time of his death. That, according to the law by which this case must be governed, the presumption in favour of its being a *Benamee* transaction, was different from that which would have existed by the Law of England, and that it was on the respondent to prove whether what was *primâ facie* the nature of the transaction was really not so. That the criterion in *Benamee* transactions is the quarter from which the money comes with which the purchase money is paid, and, that the knowledge and assent of the person in whose name the purchase is made is immaterial.—*Gopeekrist Gosain* v. *Gungapersaud Gosain.* Vol. 6, p. 53.

The assignee of a judgment creditor, who had purchased the outstanding judgment, having brought a suit for the sale of certain property under his purchased decree, and for a declaration that the property was the property of the judgment debtors, although the same had been previously sold at auction under a prior decree against the judgment debtors, upon the allegation that at that auction sale the judgment debtors had purchased the property *Benamee* in the name of a third party, and were still in possession thereof. *Held*, that it was neither established nor could be legitimately inferred from any of the facts proved that the estate in question was the judgment debtors' property.—*Sreemanchunder Dey* v. *Gopaulchunder Chuckerbutty and others.* Vol. 11, p. 28.

Although the habit of holding land *Benamee* is inveterate in India, that does not justify the Courts in making every presumption against apparent ownership.—*Moonshee Buzloor Ruheem and another* v. *Shumsoon Nissa Begum.* Vol. 11, p. 551.

In so far as the practice of holding lands and buying lands in the name of another exists, that practice exists in India as much among Mahomedans as among Hindoos, and the judgment in *Gopeekrist Gosain* v. *Gungapersaud Gosain*, (Vol. 6, p. 53,) and the cases therein referred to are, at all events, authority for the propositions that the criterion of these cases in India is to consider from what source the purchase money comes. That the presumption is, that purchases made with the money of A in the name of B, are for the benefit of A. That from the purchase by a father, whether Mahomedan or Hindoo, in the name of his son, you are not at liberty to draw the presumption which the English Law would draw, of an advancement in favour of that son. That

the fact that the property was purchased not in the sole name of the son, but in the name of the wife as well as of the son, affords a strong argument in favour of the hypothesis that it was a *Benamee* purchase, for there is no such community of interest between the wife and the son as would render it probable that they had been made joint owners of the property; and, that the reason for putting two names rather than one into a trust applies almost as strongly in India as it would in England.—*Moulvie Sayyud Ushur Ali* v. *Mussumat Bebee Ultaf Fatima and others.* Vol. 13, p. 232.

Mortgage executed in the name of the concubine of a deceased Mahomedan considered to be a *Benamee* transaction.—*Bhowan Doss and another* v. *Sheikh Mahomed Hossein and others.* Vol. 13, p. 346.

It is the duty of a Court of Justice in a suit by a father endeavouring to establish the case of *Benamee* ownership in respect of an estate of which a deceased son was the ostensible owner, and which estate had been attached and ordered to be sold in satisfaction of a judgment execution obtained by certain creditors against the estate of the deceased son, to put the objector to the rights of the creditors, founded on apparent ownership, to strict proof of his objection. He must recover, if at all, on the case that he asserts. It would be easy, if such vigilance and jealousy were not exhibited, for a family to place the family property out of reach of creditors. If the father became indebted, the titular right would be then stated to have conveyed the real interest; but, if the son were indebted, then the claim of the father would be set up.—*Nawab Asimut Ali Khan* v. *Hurdwaree Mull and another.* Vol. 13, p. 395.

The Court was not satisfied that the 20th and 21st Sections of Act No. 1 of 1845, raised a presumption fatal to the case of *Benamee* purchase set up by the appellant in a suit wherein one of the

peculiar estate, or were held by her *Benamee* for her husband. Council

contended that there may be inferred from this section taken in connection with Section 259, and the sections relating to the man-

"suspicion, and doubt may be entertain-
"ed with regard to the truth of the case
'made by the appellant; but in matters
'of this description it is essential to take
'care that the decision of the Court rests
'not upon suspicion, but upon legal
'grounds, established by legal testi-
'mony." *Held*, to be sufficient to dispose of the appeal before the Court, except that in such appeal there was no legal evidence to create suspicion, or any doubt entertained with regard to the substantial honesty of the transaction.—*Faez Buksh Chowdry* v. *Fukeeroodeen Mahomed Ahassun Chowdry.* Vol. 14, p. 234.

Brij Lall Opadhia was mortgagee in possession of a certain talook. Whilst he was so in possession, the interest of the mortgagor was offered for sale under a decree obtained against him by a creditor, and one *Lalla Buhooree Lall* became the ostensible purchaser at such sale, and the certificate of sale was granted to him in his own name as the purchaser. *Brij Lall Opadhia* remained in possession until his death, and after it the present suit was brought by *Lalla Buhooree Lall* against his heir (the present appellant) for the redemption of the talook and possession of it, it being alleged that the mortgage debt had been paid off by the receipt of the profits, and, if not, that he was ready to pay what might remain due. The defence was that the purchase was made by *Lalla Buhooree Lall* in his own name as a *Benamee* purchaser for *Brij Lall Opadhia* and with his money, and that the attempt by *Lalla Buhooree Lall* to set up title in himself was a fraud. It was decided by the Courts in India that this defence was true in fact, and it was admitted that it must be so treated in dealing with the question to be decided in this appeal, which was, whether having reference to certain sections of the Code of Civil Procedure, the defence could in law be

The passage in the judgment in the case of *Sreemanchunder Dey* v. *Gopaulchunder Chuckerbutty*, (Vol. 11, p. 28,) that "undoubtedly there are in the evi-
"dence, circumstances which may create

an enquiry between the purchaser *de facto* and the person for whom he is alleged to have purchased, upon the question, whether the purchase was *Benamee* or not; and that effect should be given

to that intention. *Held*, that Section 260 was clear and definite, and from it there was nothing from which it could be inferred that more was meant than was expressed. That it was confined to a suit brought against the certified purchaser, and to a specific direction as to what should be done in that suit, *viz.*, that it should be dismissed with costs. That the present suit, which was the converse of that pointed at in the section, was not within the words or scope of it. That no inference fairly arises from Section 259, that it was to interfere with *Benamee* transactions, or from Sections 261 to 266 of an intention to prohibit such transactions. That the inference sought to be made against *Benamee* transactions rests entirely on the 260th Section, and that if this clause were absent from the Code there is absolutely nothing in the other sections from which such an inference could be drawn. That the express enactment contains no words to restrain the defence set up, and that there was no bar to preclude the enquiry in this suit into the real title.

Benamee purchases are common in India, and effect is given to them by the Courts according to the real intention of the parties. The Legislature has not, by any general measure declared such transactions to be illegal; and, therefore, they must still be recognized and effect given to them by the Courts, except so far as positive enactment stands in the way, and directs a contrary course.—*Mussumat Buhuns Kowur* v. *Lalla Buhooree Lall and another*. Vol. 14, p. 496.

See EVIDENCE.

BENARES SCHOOL.

See JOINT HINDOO FAMILY, SISTER'S SON.

BENGAL.

See REGULATIONS.

BEYOND THE SEAS.

See CONSTRUCTION.

BIDDERS AT AUCTION.

See SALE FOR ARREARS OF REVENUE, WAGER CONTRACT.

BILL OF EXCHANGE.

Dent and Company having sent to *Oswald Seal and Company* certain Bills of Exchange, blank endorsed, with a specific appropriation, to be realized either by discount or sale, the proceeds to be placed to their credit in account, and one *Muttyloll Seal*, knowing that such was the case, and knowing that *Oswald Seal and Company* were the agents of *Dent and Company*, having purchased these bills, and *Oswald Seal and Company* having with the knowledge of *Muttyloll Seal* applied the proceeds thereof in payment of a debt of their own. *Held*, that *Muttyloll Seal* must account to the principals for the proceeds of the bills. That had he honestly paid *Oswald Seal and Company* that would have been a payment to *Dent and Company*; and that *Dent and Company* could recover from *Muttyloll Seal* the value of the bills on a count for goods sold and delivered, because there was a sale by the agents entitled to sell. —*Muttyloll Seal* v. *Dent and others*. Vol. 5, p. 328.

See PARTNERSHIP, PRINCIPAL AND AGENT, PRINCIPAL AND SURETY, STOPPAGE IN TRANSITU.

BILL OF LADING.

See AGENT, STOPPAGE IN TRANSITU.

BILL OF SALE.

In a suit to oust the appellant from the possession of one-fourth of a Zemindary, by force of a *Bynama* or Bill of Sale; and wherein, amongst others, a question was raised whether a certain Bond or *Tumusook*, subsequently issued, was granted and accepted in substitution and supersession of the previous Bill of Sale. *Held*, that the real arrangement between the parties was for advances to be made from time to time, and that the form of the contract was adopted in order to evade the decisions of the Indian Courts in respect of what they considered Champerty.

Taking the form of the suit into consideration, terms imposing upon the appellant the repayment of the advances actually made refused.—*Rajah Sahib Perhlad Sein* v. *Baboo Budhoo Sing*. Vol. 12, pp. 275, 301.

See EXECUTION.

BOARD OF REVENUE.

See SALE FOR ARREARS OF REVENUE.

BOMBAY.

See REGULATIONS.

BONÄ FIDES.

See AGENT,
HUSBAND AND WIFE,
LIMITATION,
MANAGER,
OFFICIAL,
REGISTRATION,
TENDER,
UNDERTAKING.

BOND.

See ACCOUNT STATED,
EVIDENCE,
LIMITATION,
NOVATION.

BOOKS, COLLECTORS'.

See TITLE.

BOOKS OF ACCOUNT.

See EVIDENCE.

BOUGHT AND SOLD NOTES.

In a transaction in the nature of a contract by bought and sold notes, and to be governed by the rules applicable to such a contract; it being admitted that there was a material variation between the two notes. *Held*, that no binding contract had been effected.

Where the sold note having been shown to the representatives of the sellers, they objected to the word *usual* therein, and the broker thereupon took the note to the representative of the buyer, who struck out the word *usual*, and added his initials to the alteration. *Held*, that the buyer by this act did not so sanction the sold note that he and his firm were bound by all the conditions therein contained, so that such note alone immediately constituted the contract between the parties, and, if accepted by the sellers, became binding upon the buyer, entirely abrogating, *pro hac vice*, the customary mode of dealing by bought and sold notes, and all the legal results arising therefrom.

The established usage of dealing in the mercantile world should be held in high respect, and no departure from it is to be inferred from doubtful circumstances.—*Cowie and others* v. *Remfry and others.* Vol. 3, p. 448.

BOUNDARY SUIT.

The plaintiff in a suit to set aside an award passed by the officers employed to conduct a Revenue Survey in a district, and to obtain a rectification of a boundary line as defined by them, has to overcome the strong presumption which the decision of such a question by competent officers after full local enquiry, made with the aid of a scientific survey of the locality, is calculated to raise against him.

Upon a boundary question the Judicial Committee of the Privy Council will be extremely reluctant to reverse the judgment of an Indian Court, unless they are clearly satisfied that it is wrong.—*Rajah Leelanund Singh* v. *Rajah Mohendernarain and another.* Vol. 13, p. 57.

Unless there be very good grounds for dissenting and differing from reports made upon local investigations, the Courts, even in India, and *à fortiori* the Court in England, in dealing with boundary questions ought to give great weight to them, and be guided by them.

There is no question of fact which is so improper to be brought for final decision by the Court of the Judicial Committee of the Privy Council as a question of boundary, since the decision of that question, particularly where the boundary line is to be run through a forest, or a tract of waste land, must depend so much upon local investigation and local enquiry, and on that sort of knowledge which only officers in India, who are conversant with such disputes, can acquire.

Accordingly, the Judicial Committee of the Privy Council will never interfere with the finding of an Indian Court upon a question of boundary unless they are clearly satisfied that there has been some plain miscarriage in the conduct or decision of the case, upon which they can put their hands, and make the grounds for an order reversing or varying

the decree.—*Ram Gopal Roy and others* v. *Gordon Stuart and Company and others.* Vol. 14, p. 453.

See ALLUVIAL LANDS,
LOCAL ENQUIRY,
SOONDERBUNS.

BRAHMINS, SACERDOTAL.

See ESCHEAT.

BREACH OF CONTRACT.

See LIMITATION.

BREAKING OPEN DOOR.

See FALSE IMPRISONMENT.

BRITISH SHIP.

A ship built within the limits of the East India Companies Charter, and owned by British subjects at Bombay at the time of the application for a certificate of British registry, *Held*, to be entitled to be registered as a British ship under Act 10 of 1841, and the proclamation annexed thereto, notwithstanding the fact that she was built and at one time owned by foreigners, and had sailed under foreign flags, and under foreign names. —*Crawford* v. *Spooner.* Vol. 4, p. 179.

BRITISH SUBJECT.

See TENURE,
TRESPASS.

BROTHER.

In *Katama Natchear* v. *The Rajah of Shivagunga*, (Vol. 9, p. 610,) it is stated that there are in the Hindoo Law two leading rules of inheritance, that founded on the religious duty and superior efficacy of oblation and sacrifice, and that of survivorship. Where the latter rule cannot apply, the former must be resorted to. This rule of religious obligation and priority marks the brother of the whole blood as preferably heir in succession to the estate of his brother over the brother of the half blood only. The reason given is that he offers more sacrifices, and benefits more the *manes* of the dead of his family, in their eyes a real substantial ground of preference. In nature, also, he is nearer, and, therefore, satisfies the description nearest of kin.

Unless where survivorship furnishes an exception the whole blood is preferred.—*Neelkisto Deb Burmono* v. *Beerchunder Thakoor and others.* Vol. 12, p. 523.

See ADOPTION,
MAHOMEDAN LAW,
SISTER.

BUILDINGS.

See RATING.

BYE BIL WUFA.

See MORTGAGE.

CALCUTTA.

See POTTAH.

CARNATIC TREATY.

See SOVEREIGN POWER.

CASTE.

See KHATRI CASTE,
MARRIAGE.

CAUSE OF ACTION.

Section 16 of Bengal Regulation No. [illegible] of 1793, to the effect that, "the Zillah "and City Courts are prohibited from "entertaining any cause, which, from "the production of a former decree, or "the records of the Court, shall appear "to have been heard and determined by "any former Judge, or any Superin-"tendent of a Court having competent "jurisdiction. If any doubt should "arise respecting the competency of the "former jurisdiction the Judges are to "report the circumstances to the Sud-"der Dewanny Adawlut and wait the "instructions of that Court," applies only to cases in which the question to be determined in the cause is the same question that has been already heard and determined, and not to cases in which new circumstances have intervened and altered the nature and character of the question to be determined, and the intent of the Regulation is only to prevent the re-trial of the same question.

Held, that there was an essential difference between the question whether one *Tara Purshad* was entitled to recover against one *Doorga Pershad* before

a certain order of Her Majesty in Council was pronounced, and the question whether, after that order was pronounced, he was entitled to hold money which he had previously recovered.

Money recovered under a decree or judgment cannot be recovered back in a fresh suit or action whilst the decree or judgment under which it was recovered remains in force; but this rule of law rests upon the ground that the original decree or judgment must be taken to be subsisting and valid until it has been reversed or superseded by some ulterior proceeding. If it has been so reversed or superseded, the money recovered under it ought certainly to be refunded, and is recoverable either by summary process, or by a new suit or action. The true question in such cases is, whether the decree or judgment under which the money was originally recovered has been reversed or superseded.—*Shama Purshad Roy Chowdery and others* v. *Hurro Purshad Roy Chowdery and another.* Vol. 10, p. 203.

Held (in considering the effect of Act 8 of 1859, Section 7,) that if the words of a law are clear and positive, they cannot be controlled by any consideration of the motives of the party to whom it is to be applied, nor limited by what the Judges who apply it may suppose to have been the reasons for enacting it.

The words of Section 7 of Act 8 of 1859, being, "if a plaintiff relinquish or omit to sue for any portion of his claim," they plainly include accidental or involuntary omission, as well as acts of deliberate relinquishment.

The correct test in all cases of this kind (upon the construction of Section 7 of Act 8 of 1859,) is, whether the claim in the new suit is, in fact, founded on a cause of action distinct from that which was the foundation of the former suit.—*Moonshee Busloor Ruheem and another* v. *Shumsoonnissa Begum.* Vol. 11, p. 551.

The true test of the proper application of Section 7 of Act 8 of 1859, to any particular case must be, whether there has been a splitting of the cause of action.—*Rao Kurun Sing* v. *Nawab Mahomed Fyz Ali Khan and others.* Vol. 14, p. 196.

See DIGNITIES,
EXECUTION,
JURISDICTION,
LIMITATION.

CERTIFICATE.

See ACQUIESCENCE,
EXECUTION.

CERTIFICATE OF REGISTRY OF SHIP.

See BRITISH SHIP.

CERTIFICATE OF SALE.

See BENAMEE.

CESTUI QUI TRUST.

See CONFISCATION.

CHAKERAN LANDS.

Amongst the lands granted to the Zemindars were often included lands which had been appropriated to the payment and support of public officers of the Zemindaries, or villages included in them. These lands were called *Chakeran* lands; and it appears that under the ancient system such lands were usually exempted from assessment in favour of the Zemindar, though they had no legal title to exemption.—*Raja Lelanund Sing Bahadoor* v. *The Bengal Government.* Vol. 6, p. 101.

A suit was instituted by the appellant, a Talookdar, under the provisions of Section 41 of Bengal Regulation VIII of 1793, to resume certain lands held by the defendant as *Chakeran*, on the ground that they were *Mâl Surunjamee* or *Gram Surunjamee Chakeran lands*, or *Malgusary lands* assigned to the parties in possession for the performance of certain duties connected with the Zemindary, and that as these duties had ceased to be performed, the Zemindar was entitled to resume them. The respondents pleaded that the lands were *Tannahdary* or *Chowkeedary Chakeran* assigned to the Chowkeedars for the performance of police duties, which they still continued to execute, and, therefore, not resumable by the appellant. *Held*, that the effect of the Decennial Settlement was to divide *Chakeran* or service land into two classes, 1st, *Tannahdary* lands, which by Bengal Regulation I of 1793, Section 8, Clause 4, were made resumable by the Government, the Government taking upon itself the maintenance of the general police force, and relieving the Zemindar from that expense; 2nd, all other *Chakeran* lands,

which by Bengal Regulation No. VIII of 1793, Section 41, were whether held by public officers, or private servants, in lieu of wages, to be annexed to the *Malgusary* lands, and declared responsible for the public revenue, assessed on the Zemindars' independent *Talooks*, or other estates, in which they were included in common with all other *Malgusary* lands therein. That the lands in question were *Chakeran* lands of the 2nd class, and, if resumable at all, resumable by the appellant. That by the rules laid down for the Decennial Settlement public lands of this description were not to be included in the *Malgusary* lands for the purpose of increasing the *jumma*, because the Zemindars have not the full benefit of them, but they were to be included in the *Malgusary* lands for the purpose of securing the assessment, because in the event of a sale upon default of payment of the assessment it would be important that they should be transferred to the purchasers under the Government, with whom the appointment of the person whose duty would in part be to attend to public interests would vest. That the lands in question were at the time of the Decennial Settlement appropriated, and were still liable to the maintenance of an officer who performed and was liable to perform duties as a village watchman, and that the *Talookdar* (the appellant) had no right to take possession of them for his own purposes, and hold them discharged of the obligation to which they were subject. That cases of this description must depend mainly, if not wholly, for their decision upon the question, what was the tenure or character of the lands at the time of the Decennial Settlement, and how they were dealt with in that settlement. That the lands in question were to be considered as appropriated to the maintenance of a *Chowkeedar* or village watchman in this *Talook*, and that the right of appointing such officer belonged to the *Talookdar*, and that such officer was liable to the performance of such services to the *Talookdar* as by usage in the Zemindary of Burdwan *Chowkeedars* have been accustomed to render to the Zemindar.—*Joykishen Mookerjee* v. *The Collector of East Burdwan and another*. Vol. 10, p. 16.

CHAMPERTY.

Champerty or *Maintenance* must be something against good policy and justice, something tending to promote unnecessary litigation, something that in a legal sense is immoral, and to the constitution of which a bad motive in the same sense is necessary.—*Fischer* v. *Kamala Naicker*. Vol. 8, p. 170.

See BILL OF SALE,
ISSUES.

CHARGE.

See ESCHEAT,
EVIDENCE,
INCUMBRANCER,
LIEN,
MANAGER,
MINOR,
MORTGAGE,
PALKI HUQ,
SALE UNDER DECREE,
WIDOW.

CHARITABLE BEQUEST.

Where there exists a party entitled to receive a fund bequeathed for a foreign charity, there can be no objection made to give over that fund to him, and allowing him to administer it in the country in which the charity is to be established.—*Mayor of Lyons* v. *East India Company*. Vol. 1, p. 293.

CHARITABLE PURPOSES.

See ADVOCATE-GENERAL,
MAHOMEDAN LAW.

CHARITIES.

The Charter giving to the Supreme Court of Madras the same jurisdiction as the Court of Chancery in England, that Court has jurisdiction as to matters arising within its limits relating to charities which the Court of Chancery in England would have jurisdiction to take care of if the matter had arisen there.—*Attorney-General* v. *Brodie*. Vol. 4, p. 190.

CHARTERS.

The Charter of justice of Bombay is, as near as may be, a transcript of that of Madras, of the 33, Geo. 3. The Charter of Madras follows that of Bengal of the 13th Geo. 3, with this difference, that liberty is given to appeal against any *Judgment* or *Determination* of the Supreme Court

of Madras, whereas the liberty to appeal is given in the Calcutta Charter against any *Judgment, Decree, Order* or *Rule*, afterwards varying the terms to *Judgment, Decree*, or *Decretal Order*. In other respects the provisions are substantially the same. The word *Determination* is an expression at least equivalent to the terms used in the Bengal Charter; and as an appeal undoubtedly lies from all decrees or decretal orders on the Equity side of the Supreme Court at Calcutta, it does equally from every decree or decretal order on the Equity side of the Supreme Courts of Bombay and Madras. The context of all the three Charters shows that the appeal is not confined to cases in which some right or duty is finally decided, and the clause limiting the value in dispute to 10,000 pagodas does not apply to the value of the matter in dispute involved in the order, but to the subject of the suit itself.—*Nathoobhoy Ramdass* v. *Mooljee Madowdass and others*. Vol. 2, p. 169.

A Charter is, for its purposes, equivalent to an Act of Parliament, and must be construed on the same principles.

The meaning of a Charter being ascertained, no question of convenience or inconvenience can in a clear case be allowed to have any weight.

One of the first rules of construction is, that effect shall if possible be given to every part of an instrument.—*Morgan and others* v. *Leech*. Vol. 2, p. 428.

To the clear and undoubted meaning of a Charter the Court must give effect, however injurious it may conceive the consequences to be.

To ascertain the meaning of a clause, the whole Charter must be looked at, at what precedes and at what succeeds, and not merely at the clause itself.

By the following clause in the Charter, or Letters Patent, of the 8th December 1823, for establishing the Supreme Court of Judicature at Bombay, granted under the authority of an Act of Parliament, *viz.*, 4, Geo. 4, Cap 71. "And We 'do hereby also reserve to ourselves, our 'heirs and successors, in our or their 'Privy Council, full power and autho- 'rity upon the humble petition of any 'person or persons aggrieved by the 'judgment or determination of the 'Supreme Court of Judicature at Bom- 'bay to refuse or admit his, her or their 'appeal thereupon, upon such terms "and under such limitations, restric- "tions and regulations as we or they "shall think fit, and to reform, correct, "or vary such judgment or determina- "tion as to us or them shall seem meet," the Crown did not reserve to itself the right of appeal in criminal cases.

From the commencement to the end this reserving clause is peculiarly applicable to civil cases, and every expression in it may be satisfied by confining it to civil cases only.

There is not one word of *Indictments, Informations* or *Criminal Suits*.

In a case in which the Crown grants a Charter by virtue of an Act of Parliament, that Charter must be considered as granted in the execution of the powers which were granted by that Act of Parliament; and if by the true construction of the Charter the prerogative of the Crown is in any way limited, it must be said to be limited, not by the act of the Crown itself, but by the act of the Crown acting under the authority of Parliament.—*The Queen* v. *Eduljee Byramjee and others*. Vol 3, p. 468.

See APPEAL,
ATTORNEY,
CHARITIES,
NATIVE CHRISTIANS,
PRACTICE,
RESTITUTION OF CONJUGAL RIGHTS.

CHILDREN.

The question in the appeal depending upon the construction and legal effect of the Will of Colonel *James Skinner*, an officer in the Service of the East India Company, who died in December 1841, resident and domiciled in the Delhi territory, then part of the North-Western Provinces of India, but which after the mutiny was placed under the administration of the Punjab Government, and of whose personal *status* little could be ascertained beyond that which was afforded by the Will; it being stated, and there being proof that he was illegitimate, and there being nothing to indicate the religious belief or profession of the Colonel, or of his family, or what were their habits or usages, his origin being unknown, and he, being illegitimate, belonging to no family. *Held*, that the construction of the Will must depend on the law of domicil. That at the time of his death there was no *lex*

loci of the province in which he was domiciled, the law applicable to the succession of any individual depending on his personal *status*, which again mainly depended on his religion; thus the succession of a Hindoo would, as a general rule, fall to be regulated by Hindoo Law, that of a Mahomedan by Mahomedan Law, and that of an East Indian Christian by English Law; in every case, however, for the purpose of determining the *status personalis* regard being had to the mode of life and habits of the individual, and to the usages of the class or family to which he belonged; and if no specific rule could be ascertained to be applicable to the case then the Judges administering justice in the province were to act "according to justice, equity and good conscience;" such being in substance the regulations defining the jurisdiction of the Courts of the province in which Colonel *Skinner* was domiciled, and which were in force at the time of his decease. That it was impossible, under the circumstances, to affirm that any particular law was applicable to the construction of the Colonel's Will, or the regulation of his succession, and that any questions that might arise respecting them must, therefore, be determined by the principles of natural justice. That the technical rule of construction according to English Law that, under a testamentary gift to children as a class, illegitimate children, although recognized by a testator in his lifetime cannot be permitted to share jointly with natural lawful children, did not apply, as Colonel *Skinner's* succession was not to be administered according to English Law. That the word *children* where it occurred in Colonel *Skinner's* Will must be taken in that sense, and receive that signification in which it was plain from the language of the Will and the dispositions it contained, that it was used by the testator, that is to say, its extent of meaning in the vocabulary and mind of the testator, must be determined by the Will itself. That the word *children* in the Will of Colonel *Skinner* denoted and included as well illegitimate as legitimate children, whenever such illegitimate children were acknowledged or treated as his children by their putative father.—*Barlow* v. *Orde and others.* Vol. 13, p. 277.

See GUARDIAN AND WARD
LEGITIMACY,
MINOR.

CHOWKEEDAR.

See CHAKERAN LANDS.

CHOWKEEDARY CHAKERAN LANDS.

See CHAKERAN LANDS.

CHRISTIANS.

See NATIVE CHRISTIANS.

CHUR.

See ALLUVIAL LANDS.

CIVIL PROCEDURE CODE.

The Civil Procedure Code is a Code professing to deal, not with rights, but with remedies, and procedure to enforce rights.—*Mussumat Buhuns Kowur* v. *Lalla Buhoree Lall and another.* Vol. 14, p. 496.

See ACT 8 OF 1859,
EVIDENCE,
PRACTICE.

CLASS.

See CHILDREN.

CLEAR AND POSITIVE PROOF.

See LIMITATION.

CODE OF CIVIL PROCEDURE.

See ACT 8 OF 1859,
CIVIL PROCEDURE CODE,
EVIDENCE,
PRACTICE.

COHABITATION.

See LEGITIMACY.

COLLATERALS.

See ILLEGITIMACY,
WIDOW.

COLLECTOR.

See AWARD.

COLLECTORS' BOOKS.

See TITLE.

COMMENSALITY.

See DIVISION,
JOINT UNDIVIDED HINDOO FAMILY.

COMMUNITY OF INTEREST.

See WIDOW.

COMPENSATION.

Compensation and restitution money ordered to be paid by the East India Company to the purchaser of an estate sold by public auction for arrears of revenue, and which sale was subsequently annulled.—*Maharajah Ishuree Persad Narain Sing and another* v. *Lal Chutterput Sing.* Vol. 3, p. 100.

COMPROMISE.

If the nature or the extent of the rights of the respective parties can be considered as the fair subject of doubt at the date of a deed of compromise and if, to avoid expense and delay by legal enquiry, they agree to settle the contest by an amicable arrangement, such transaction is not to be disturbed on the ground of the inequality of benefit which either party may eventually have received from it.

Gross fraud is not to be imputed upon suspicion only.

Unless the charge of fraud be proved parties are not to be released from agreements entered into by their solemn acts.

The burthen of showing that it has been fraudulently obtained by false representation is cast upon those who seek to impeach the validity of their own deed.—*Rajunder Narain Rae and another* v. *Bijai Govind Sing.* Vol. 2, p. 181.

Plaintiff claimed to be entitled to a certain share of what he stated to be the common undivided property of the family, and defendants denying plaintiff's right, the parties had proceeded in a suit to the examination of witnesses, two having been examined on the part of the plaintiff and one on the part of the defendant, and directions had also been given for the production of certain documents. At this stage a proposal for a compromise was made, which was brought to a conclusion, plaintiff signing two documents, one called a *Farigh Kutti* (Deed of Release,) and the other an *Ikrarnama* (Deed of Acknowledgment). The *Farigh Kutti* contained, amongst others, words to the following effect: "I have therefore with my own free will and consent "settled this action among ourselves," and the plaintiff by the *Ikrarnama* engaged to deliver in to the provincial Court a *Razinama* in the action, which *Razinama*, however, he subsequently refused to execute. *Held*, that the case was concluded by the *Farigh Kutti*. That although the *Farigh Kutti* contained the clause "the costs of the Court "are agreed to be at the responsibility "of the defendants," it did not follow that the defendants were responsible for all the costs subsequently incurred in consequence of the unsuccessful and apparently unjust litigation in reference to the plaintiff's claim, and which he instituted and carried on for the purpose of freeing himself from the obligation entered into by the *Farigh Kutti*, and the lower Court having decreed that costs proportionate to the consideration money entered in the *Farigh Kutti* be paid by the defendants, and the remaining costs of the parties on account of the residue of the plaintiff's claim be entered at the plaintiff's responsibility, the Judicial Committee of the Privy Council confirmed that decree.—*Munni Ram Awasty* v. *Sheo Churn Awasty and another.* Vol. 4, p. 114.

A question respecting the sanction of a compromise between official liquidators and the creditors of an association falls in a peculiar manner within the discretion of the Judges before whom it is brought.

The Judicial Committee of the Privy Council, therefore, seeing no ground for controlling the discretion exercised by the High Court of Bombay, in accordance with the wishes of the great bulk of the creditors, advised the affirmation of an order, sanctioning a compromise, made by that Court.—*The Bank of Hindustan, China and Japan* v. *The Eastern Financial Association.* Vol. 13, p. 15.

See ACCOUNT STATED,
EVIDENCE,
FAMILY ARRANGEMENT,
FRAUDULENT DECREE,
GUARDIAN AND WARD,
LIMITATION,
PRACTICE.

COMPUTATION OF TIME.

See LIMITATION.

CONCUBINE.

See BENAMEE,
LEGITIMACY,
MAINTENANCE,
MARRIAGE.

CONCURRENT JUDGMENTS.

See PRACTICE.

CONDITIONAL CONTRACT.

See AGENT.

CONDITIONAL SALE.

Respondent was in possession of certain landed property, upon which certain dues were owing to Government, and the appellant, to prevent the property being sold to pay such Government dues, gave security for the payment thereof, and agreed to take security for the repayment of his advances, as well as of a further sum, due by the respondent to another person, which the appellant agreed also to advance; and in pursuance of such agreement certain instruments were executed, to wit, a *Putta* and *Arzee* authorizing the Collector to make a transfer of the property to the appellant, (which, however, was not to be handed over to the appellant until default should be made by the respondent according to the agreement,) and a certain *Kararnamah*, by which it was stipulated, that if the respondent should not pay the instalments therein mentioned fully, or if any part of them should be in arrear, the Zemindary should continue under the appellant, and the appellant should only return to the respondent the amount which might have been paid by him, and on the same day another *Kararnamah* was entered into between the parties by which the plan of a conditional sale was reduced to a mortgage, with a covenant between the appellant and the respondent to the effect, that if he, the appellant, should take possession of the property for the purpose of enabling him to discharge the amount for which he became security, then, that as soon as he should have received out of the rents and profits the sums he had paid, with all expenses, he should restore the estate to the respondent. Appellant upon default having entered into possession of the property. *Held*, that the transaction was of the nature of a mortgage. That there was no such inconsistency between the two *Kararnamahs* as to make the second an invalid instrument, and, that the appellant having reimbursed himself for what he had advanced out of the profits of the property, should restore the estate to the respondent, and refund what he had been overpaid out of such profits.—*Sri Rajah Kakerlapoody Jagganadha Jaggaputty Raz* v. *Sri Rajah Vutsavoy Jagganadha Jaggaputty Raz*. Vol. 2, p. 1.

See MORTGAGE.

CONDITION PRECEDENT.

Held, that there was no ground for saying that the proof of the performance of certain religious ceremonies was a condition precedent to the enforcement of a claim for rents under an article in a compromise.—*Radha Jeebun Moostuffy* v. *Taramonee Dossee*. Vol. 12, p. 380.

See EVIDENCE,
MANAGER,
SALE FOR ARREARS OF REVENUE.

CONFISCATION.

In a suit for certain ancestral property formerly belonging to one *Ujaib Sing*, who had died leaving four sons and his widow him surviving, and which property had been seized and confiscated by the Government under the provisions of Bengal Regulation XI of 1796 on account of three of the sons of the said *Ujaib Sing* having failed to appear to answer to a charge of having been engaged in a rebellion at Benares in the year 1799. *Held*, that the fourth son, a minor, not having engaged in the rebellion ought to be declared entitled to his one-fourth share in the property confiscated; and that the widow was entitled to maintenance out of the whole. —*Mussumat Golab Koonwur and others* v. *The Collector of Benares and another*. Vol. 4, p. 246.

Bengal Regulation No. XI of 1796, authorizing the confiscation of the lands of certain absconding criminals, is a highly penal one, and should be construed strictly. The 4th Section provides, that, after taking certain specified proceedings, the Magistrate is to order the attachment of any land, or other real property, held by the absentee in his jurisdiction, by requiring the Collector,

if the absentee be a proprietor of land or Sudder farmer paying revenue directly to Government, to hold the land or farm in attachment until further notice; and prescribes the measures to be taken by the Collector on receiving such a requisition. The 5th Section provides for the removal of the attachment on the attendance of the party; and the 6th Section enacts, "should the absentee "neglect to attend for a period of six "months after the lands have been "ordered under attachment, the Magis- "trate is to report the case to the Gov- "ernor-General in Council, who will "pass such order upon it, and upon "the future disposal of the lands, as "he may judge proper." In the absence of clear words indicating such an intention, it cannot be assumed that the Legislature intended to authorize the confiscation of the property of any person other than the delinquent. The Regulation makes no express provision for the case of joint proprietors of land, or persons jointly holding a Sudder farm of land. If such a joint proprietorship or joint holding be ostensible as well as real, and appears on the Collector's books, the words "land "or other real property held by the ab- "sentee" will be limited to his undivided share in the actual lands or farm. If the absentee is one of a joint family possessed of a Zemindary, of which one member only is represented as owner, the fact of such registration would neither justify the confiscation of the whole Zemindary, if the absentee were the sole registered proprietor, nor prevent the confiscation of the share of the absentee if he were not the registered proprietor. The same is true of a farm enjoyed by a joint family as part of the joint estate, though taken in the name of one of its members. No analogy can be drawn from the doctrine of forfeiture in England, where the doctrine is founded on tenure, and where there is a broad and marked distinction between Law and Equity, the Courts of Common Law taking no cognizance of equitable estates.

There is no pretence for saying that a sale under this regulation can carry with it the consequences of a sale for arrears of public revenue, and that it sweeps away all sub-tenures or incumbrances created by the delinquent, or those through whom he claims.

The regulation does not contemplate the forfeiture of the tenure as between landlord and tenant. What it contemplates is the confiscation and sale of the tenure.—*Juggomohun Bukshee* v. *Roy Mothooranath Chowdry and others.* Vol. II, p. 223.

Plaintiff was the widow and heir of a deceased Oude nobleman, the representative of the cadet branch, as the *Rajah* of *Bhinga* was the representative of the elder branch, of a great Oude family. The *Rajah* was the Talookdar of a great Talook. The younger branch had their separate estate. Many years ago in the then state of things in Oude it was thought advisable that both estates should be, as to their relations with the Oude Government united in one great Talookdary, the head of the elder branch representing the whole, the younger branch, however, continuing in undisturbed and absolute possession, as the proprietor, of its own villages, and paying only its proportion of the jumma assessed on the whole. After the annexation of Oude by the British power, there being no longer, as he thought, the motive for covering himself with the name and protection of the *Rajah* of *Bhinga*, the husband of the appellant was minded to apply for a distinct settlement with himself. The *Rajah*, however, wrote to dissuade him from this step in a letter in which, while desiring to retain the nominal Talookdary of the whole, he acknowledged in the clearest terms the right of his relation, and pledged himself that the possession of the property by the latter should be respected and safe. Plaintiff's husband died, and the *Rajah* hearing that the widow, the plaintiff, was of the same mind as her husband, and desirous of placing herself immediately under the British Sircar, wrote her a letter similar to the one he had formerly addressed to her husband. The summary or provisional settlement was made with the *Rajah*, but before he obtained his regular settlement, and the sunnud which would have been his formal grant, he came under the grave displeasure of the authorities, and an order went forth confiscating half his estate. The *Rajah* concealed from Government the real ownership of the appellant's villages, and contrived that they should be taken to satisfy in part the order of confiscation, against which the appellant remonstrated and eventually brought a suit for the recovery of her property. *Held*, that the appellant was the acknowledged *cestui*

qui trust of the registered Talookdar, who had bound himself expressly in writing that he would respect her rights if she permitted him to be alone so registered. That it would be a scandal to any legislation if it arbitrarily and without any assignable reason swept away such rights. That the lady was clearly the equitable owner, and that the decree of confiscation against her trustee could on no principle of Law or Equity, or good conscience, be made to affect her, and certainly could not justify a sentence which in effect made her the sufferer for his offence.—*Mussumat Thukrain Sookraj Koowar* v. *The Government and others*. Vol. 14, p. 112.

See RAJ.

CONFLICTING EVIDENCE.

See EVIDENCE.

CONJECTURE.

See EVIDENCE,
FRAUD,
WILL.

CONJUGAL RIGHTS.

See RESTITUTION OF CONJUGAL RIGHTS.

CONSENT.

See ARBITRATION,
WIDOW.

CONSIDERATION.

See ACCOUNT STATED,
DURESS,
ESTOPPEL,
EVIDENCE,
GIFT INTER VIVOS,
INTEREST,
NABOB OF THE CARNATIC.

CONSOLIDATION OF SUITS AND APPEALS.

Where there are two distinct causes of action, and two separate judgments in the lower Courts, and the suits were never consolidated, but all along treated as separate and distinct actions, the same cannot be consolidated for the purposes of appeal.—*Moofti Mohummud Ubdoollah and another* v. *Baboo Mootechund*. Vol. 1, p. 363.

CONSPIRACY.

See JURISDICTION.

CONSTRUCTION.

If it appear that words have long been used in a sense which may not improperly be called technical, and have been judicially construed to have a certain meaning, and have been adopted by the Legislature in that sense, the rule of construction of Statutes will require that the words in a Statute should be construed according to the sense in which they have been previously used, although that sense may vary from the strict literal meaning of them.

The words *beyond the seas* were well known to the Common Law before the enactment of any Statute containing those words.

The words *being out of England, out of the realm*, and *beyond the seas* are synonymous in legal import.

The words of the Statute 21, James I, Cap. 16, *beyond the seas* are in legal import and effect synonymous with the words *out of the territories*, and *out of the realm*.—*Her Highness Ruckmaboye* v. *Lulloobhoy Mottichund*. Vol. 5, p. 234.

Deeds and contracts of the people of India ought to be liberally construed. The form of expression, the literal sense, is not to be so much regarded, as the real meaning of the parties which the transaction discloses.

The terms *Proprietor* and *Heir* when they occur, whether in deeds or pleadings, or documentary proofs, may indeed by a mere adherence to the letter be construed to raise the conclusion of an assumption of ownership in the sense of beneficial enjoyment derogatory to the rights of the heir, but they ought not to be so construed unless they were so intended.

In the case under discussion it was held that a certain person must be viewed as a *Manager*, inaccurately and erroneously described as *Proprietor*, or *Heir*.—*Hunooman Persaud Panday* v. *Mussumat Babooee Munraj Koonweree*. Vol. 6, p. 393.

The true way is to take the words

of an Act as the Legislature have given them, and to take the meaning which the words given naturally imply, unless, where the construction of those words is, either by the preamble, or by the context of the words in question, controlled or altered.—*Crawford* v. *Spooner*. Vol. 4, p. 179.

See ADOPTION,
APPROPRIATION,
CAUSE OF ACTION,
CHARTER,
CHILDREN,
CONFISCATION,
DISQUALIFIED LANDHOLDER,
ENHANCEMENT OF RENT,
GIFT OVER,
INTEREST,
JOINT UNDIVIDED HINDU FAMILY,
JURISDICTION,
LIFE INTEREST,
LIMITATION,
MAHOMEDAN LAW,
MOCURRERY,
MORTGAGE,
POTTAH,
PRACTICE,
REGISTRATION,
RESUMPTION,
RESTITUTION OF CONJUGAL RIGHTS,
SUNNUD,
SURETY,
TENDER,
TIME POLICY,
UNAVOIDABLE ACCIDENT,
UNDER TENANTS,
WAGER CONTRACT,
WILL.

CONTINGENT LOSS.

See LIEN.

CONTINUING OBLIGATION.

See TIME POLICY.

CONTRACT.

See AGENT,
ANNUITY,
BOUGHT AND SOLD NOTES,
COMPROMISE,
CONSTRUCTION,
DOWER,
DURESS,
EVIDENCE,
GIFT INTER VIVOS,
INSOLVENCY.
INTEREST.
LEASE,
LIEN,
LIMITATION,
MERCANTILE USAGE,
MORTGAGE,
PRINCIPAL AND AGENT,
TENDER,
TIME,
TIME POLICY,
WAGER CONTRACT.

CONTRIBUTION.

Where there had been disputes respecting family property and agreements were entered into by which the parties made a division of the property, and agreed to pay a Banker's demands in equal shares, and one of the parties to such agreements had been made under a decree to pay the whole of the Banker's demands. *Held*, that he had clearly a right to recover from the others their proportion of the Banker's demands unless they could show some answer to this right.—*Domum Sing and others* v. *Kasee Ram and another*. Vol. 1, p. 366.

CONVERTS.

Whether it is competent for a family converted from the Hindoo to the Mahomedan faith to retain for several generations Hindoo usages and customs, and by virtue of that retention to set up for itself a special and customary law of inheritance, is a question, which so far as the Court was aware, has never been decided, and as it was not necessary for the determination of the present appeal to decide that question in the negative, the Court abstained from doing so.

To control the general Law, if indeed the Mahomedan Law admits of such control, strong proof of special usage will be

required.—*Jowala Buksh* v. *Dharum Sing and others.* Vol. 10, p. 511.

See NATIVE CHRISTIANS.

CO-PARCENERY.

See ANCESTRAL PROPERTY,
JOINT UNDIVIDED HINDOO FAMILY,
NATIVE CHRISTIANS,
WIDOW.

CO-PARTNERSHIP.

See DECREE FOR AN ACCOUNT.
PARTNERSHIP.

COPIES.

See EVIDENCE.

COPY OF A COPY.

See EVIDENCE.

CORONER.

See SUICIDE.

CO-SHARER.

See ENHANCEMENT OF RENT,
JOINT UNDIVIDED HINDOO FAMILY.

COSTS.

Under Bombay Regulation No. II of 1800, the Zillah Courts had no discretion as to costs, and the ground of a decision being, that a suit was instituted by parties who had no right to institute it, the person in whose name and on whose behalf it was instituted being at the time dead. *Held*, that the whole case being before the Court, according to the Regulation they must give the costs according to the result of the suit.

Had there been a discretion with respect to the costs, vested in the Zillah Court, an appeal would not have been allowed against the exercise of that discretion, because no appeal against a decree merely as to costs would be allowed.—*Mussumat Keemee Baee* v. *Latchmandas Narraindas.* Vol. 1, p. 470.

Appeal being recommended to be dismissed upon grounds wholly different from those relied on by the Court below, the dismissal was recommended to be without costs.—*Fischer* v. *Kamala Naicker.* Vol. 8, p. 170.

Appellant, who had been granted leave to appeal in December 1860, having, although served with peremptory notice to lodge his case, taken no step to bring the appeal to a hearing up to June 1864, appeal dismissed, and the respondent's costs ordered to be paid out of the £300, deposited with the registrar. The residue of the £300 to be paid to the appellant's Solicitor.—*Gaur Monee Debia* v. *Khajah Abdool Gunnee.* Vol. 10, p. 59.

The decree of the Sudder Court being affirmed, with the exception that certain interest allowed was to be reduced by the difference between 12 per cent. and 10 per cent., the Court, having regard to this alteration in the amount decreed, and to the other circumstances of the case, recommended that each party should bear his own costs of the appeal.—*Murtunjoy Chuckerbutty* v. *Cochrane.* Vol. 10, p. 229.

A slight modification of the decree held not to deprive the respondents of the costs of the appeal.—*Lalla Bunseedhur* v. *Koonwur Bindeseree Dutt Singh.* Vol. 10, p. 454. See also *Rampershad Tewarry* v. *Sheo Churn Doss.* Vol. 10, p. 490.

Directions given to the registrar to disallow all such costs and expenses as might have been unnecessarily occasioned by the inclusion in the transcript sent from India of matters which he should consider to have been improperly introduced therein, and that any taxation which might be had in India be regulated by the course which the registrar of the English Appellate Court might adopt.—*Tarakant Bannerjee* v. *Puddomoney Dossee and others.* Vol. 10, p. 476.

There being no grounds for a claim for damages amounting to the appealable sum of Rupees 10,000, and the amount actually recovered falling far short of that sum, the Court directed the costs below to be apportioned according to the ordinary course of the Courts below, and gave neither party the costs of the appeal.—*Mudhun Mohun Doss and another* v. *Gokul Doss.* Vol. 10, p. 563.

The Court being of opinion that the costs ought not to have been swollen by the severance in defence of the four persons representing the original mortgagees, and the presentation of two distinct appeals, directed the registrar to tax the costs accordingly.—*Shah Mukhun Lall and others* v. *Baboo Sree Kishen Singh and others.* Vol. 12, p. 157.

As to adding the costs to the amount of the decree to make up the appealable value, see *Nilmadhub Doss* v. *Bishumber Doss and others.* Vol. 13, p. 85.

Great and unexplained delay having taken place in the prosecution of an appeal, eventually heard *ex parte.* No costs were given to the appellant although successful.—*Pattabhiramier* v. *Vencatarow Naicken and another.* Vol. 13, p. 560.

Considering that they were dealing with the heir-at-law questioning a Will, and supporting a judgment in his favor setting aside the Will, no order made as to the costs of appeal.—*Rajendro Nath Holdar* v. *Jogendro Nath Banerjee and others.* Vol. 14, p. 67.

See APPEAL,
APPEALABLE VALUE,
EVIDENCE,
LIMITATION,
LOCUS STANDI,
SECURITY FOR COSTS,
SPECIAL LEAVE TO APPEAL,
UNDERTAKING.

COUNSEL.

See ADVOCATE,
PRACTICE,
UNDERTAKING.

COURT OF WARDS.

See DISQUALIFIED LANDHOLDER,
LEASE.

COUSIN.

See SISTER,
SISTER'S SON,
WILL.

CREDIT.

See INSOLVENCY.

CREDITORS.

See FRAUDULENT CONVEYANCE,
INSOLVENCY,
LIEN,
MANAGER.

CRIMINAL APPEAL.

See APPEAL,
CHARTER.

CRIMINAL LAW.

See APPEAL,
CHARTER.

CROSS APPEAL.

Application on part of respondents for special leave to enter a cross appeal against portions of a decree of the Sudder Court of the North-Western Provinces appealed from to England, so far as the decree affected the applicant's interest, granted, although applicants, thinking according to the practice of the Sudder Courts, that they could state their objections at the hearing of the principal appeal, without any formal or separate appeal being instituted by them, had, in error, not applied to the Sudder Dewanny Adawlut for leave to appeal within the six months prescribed for presenting a petition of appeal. The cross appeal to be prosecuted and come on for hearing on one printed case, and on the same printed transcript record as the principal appeal in the suit, and if such principal appeal should be dismissed for non-prosecution, applicants to be at liberty to prosecute their appeal as a separate cause.—*Nana Narain Rao* v. *Hurree Punt Bhao and another.* Vol. 6, p. 464.

Appellants' counsel having stated that they were willing to have the case argued without the necessity of the respondents lodging a petition for leave to appeal, appeal heard on the whole decree.—*Myna Boyee and another* v. *Ootaram and others.* Vol. 8, p. 400.

Application granted, on terms, for leave to file a cross appeal. Petitioner urging, that, appellants having appealed against the whole decree, he, acting upon the practice of the Courts of India, was under the impression until the time for appeal had expired, that it would be open to him at the hearing of the appeal in England to offer objections to that portion of the decree to which he objected, without incurring the expense of a cross appeal in respect thereof.—*Omanath Chowdry and others* v. *Sheikh Nujeeb Chowdry and others.* Vol. 8, p. 498.

CROSS EXAMINATION.

See EVIDENCE.

CROWN.

The Crown has not under the Statute 21st and 22nd Victoria Cap. 106, transferring the Government of India to the Crown, a higher title than the late East India Company had.—*Gridhari Lall Roy* v. *The Bengal Government.* Vol. 12, p. 448.

See APPEAL,
CHARTER,
ESCHEAT,
SOVEREIGN POWER,
SUICIDE,
WIDOW.

CRUELTY.

See RESTITUTION OF CONJUGAL RIGHTS.

CUSTODY.

See ESCAPE.

CUSTOM.

The parties to a suit, the question in which was one of family usage and custom, were members of a family of Bengali Soodra Sutgops, which had migrated at a remote period from Burdwan, in the South-Western part of Bengal, to the district of Poornea, and the main point raised was, whether the law in force in Mythila, or the law prevailing in Bengal, was to govern the rights of succession and distribution, among the respective parties to the appeal, to a pergunna and other property situate in Poornea. The Judicial Committee of the Privy Council recommended to be affirmed the judgment of the Court below, which decreed to the effect, that the marriage and funeral customs of both parties being according to Mythila Law, they had no doubt that the Mythila Law was followed in the family of both parties.—*Rany Pudmavati* v. *Baboo Doolar Sing and others.* Vol. 4, p. 259.

In a suit for the recovery of a Zemindary in Zillah Midnapore, the only question really being, whether the descent in the family was to be regulated by the *Daya Bhaga* and the Sastras in use in Bengal, or by the *Mitacshara*, the Judicial Committee of the Privy Council reported in favor of affirming the decree of the Lower Appellate Court, which confirmed the decree of the Court of First Instance, holding, that the plaintiff had altogether failed to prove the use in his family of the rules of the *Mitacshara.*—*Rany Srimuty Dibeeah* v. *Rany Koond Luta and others.* Vol. 4, p. 292.

The prevalence in any part of India of a special course of descent in a family, differing from the ordinary course of descent in that place of the property of that class or race, stands on the footing of usage or custom of the family.

It must have had a legal origin and have continuance, and, whether the property be ancestral or self-acquired, the custom is capable of attaching and of being destroyed, equally as to both.

Where, on the evidence, it appeared that a family coming into Bengal from the North-Western Provinces, and who it was alleged continued under their ancient law, came attended by priests of their own persuasion, a continuance of this state of things was considered presumable, and the *onus* held to be on the party alleging an interruption or cessation of it, to prove such allegation.

A family may retain its religious rights, and yet acquiesce in a devolution of property in the common course of descent of property in the district to which they have migrated amongst persons of the same race, but still there is in the Hindoo Law so close a connection between their religion and their succession to property, that the preferable right to perform the *Shradh* is commonly viewed as governing also the question of the preferable right to succession to property, and as a general rule they would be expected to be found in union.—*Soorendronath Roy* v. *Mussamat Heeramonee Burmoneah.* Vol. 12, p. 81.

It is the duty of an European Judge who is under the obligation to administer Hindoo Law, not so much to enquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal, and has there been sanctioned by usage, for under the Hindoo system clear proof of usage will outweigh

the written text of the law.—*The Collector of Madura* v. *Moottoo Ramalinga Sathupathy*. Vol. 12, p. 397.

Where a custom is proved to exist, it supersedes the general law, which, however, still regulates all beyond the custom.—*Neelkisto Deb Burmono* v. *Beerchunder Thakoor and others*. Vol. 12, p. 523.

It is of the essence of special usages, modifying the ordinary law of succession, that they should be ancient and invariable; and it is further essential that they should be established to be so by clear and unambiguous evidence. It is only by the means of such evidence that the Courts can be assured of their existence, and that they possess the conditions of antiquity and certainty on which alone their legal title to recognition depends.

A Collector's letter containing a summary of the opinions of 20 Zemindars and Poligars, *Held*, to be not properly admissible in evidence, and further, that if received, it could not be safely relied on as affording clear and unambiguous proof of the existence of an ancient and invariable custom in the district.—*Ramalakshmi Ammal* v. *Sivanantha Perumal Sethurayar*. Vol. 14, p. 570.

See ALLUVIAL LANDS,
BOUGHT AND SOLD NOTES,
CONVERTS,
EVIDENCE,
FACTOR,
FAMILY USAGE OR CUSTOM,
HINDOO LAW,
INTEREST,
MERCANTILE USAGE,
NATIVE CHRISTIANS,
RAJ,
TIME POLICY,
WILL.

CUTTOOGOOTAGA TENURE.

A *Cuttoogootaga* lease is not an alienation but a perpetual lease, and such an estate could not without great violence to the language be considered as a transfer within the meaning of the words of Madras Regulation No. XXV of 1802, Section 8, so as to require registration. The language of that Regulation would seem to apply to questions between the Zemindar and the Government, and to have been framed with a view of preventing a severance of the Zemindary without public notice to Government.—*Vencataswara Yettiapah Naicker* v. *Alagoo Moottoo Servagaren*. Vol. 8, p. 327.

DAMAGES.

See DOWER,
LEASE,
MESNE PROFITS,
PRACTICE,
TORT.

DAMAGE, SPECIAL.

See TORT.

DANCING GIRL.

See MAINTENANCE.

DAUGHTER.

See MAHOMEDAN LAW,
WIDOW,
ZEMINDAR.

DEATH.

See LIMITATION,
PRACTICE.

DEATH-BED DISPOSITION.

See PURDAH WOMEN.

DEBT.

See DOWER,
EXECUTION,
INTEREST,
LIMITATION,
PROPERTY.

DEBTOR AND CREDITOR.

See INSOLVENCY.

DECENNIAL SETTLEMENT.

See CHAKERAN LANDS,
ENHANCEMENT OF RENT,
LA KHIRAJ LANDS,
SOONDERBUNS.

DECREE.

In all cases it may be expedient expressly to embody in a decree of affirmance so much of the decree below as it is intended to affirm, and thus avoid the necessity of a reference to the superseded decree.—*Kristo Kinkur Roy and another* v. *Rajah Burrodacaunt Roy and another.* Vol. 14, p. 465.

See ARBITRATION,
CAUSE OF ACTION,
CHARTER,
DECREE FOR AN ACCOUNT,
EXECUTION,
FRAUDULENT DECREE,
INTEREST,
LIEN,
MESNE PROFITS,
MORTGAGE,
PRACTICE,
REVIEW OF JUDGMENT,
SALE UNDER DECREE,
TORAS GARAS,
VOLUNTARY PAYMENT,
WIDOW.

DECREE FOR AN ACCOUNT.

A decree for an account is not a mere direction to enquire and report. It proceeds, and must always proceed, upon the assumption that the party calling for it is entitled to the sum found due. It is a decree affirming his rights, only leaving it to be enquired into, how much is due to him from the party accounting.

Decree for dissolution of a co-partnership in certain family Kothis and for an account, reversed, all the proper parties not being before the Court, and the precise grounds of the decree not satisfactorily appearing.—*Baboo Janokey Doss and another* v. *Bindabun Doss and others.* Vol. 3, p. 175.

DECREE, FINAL.

See REVIEW OF JUDGMENT.

DECREE HOLDER.

See MORTGAGE.

DECRETAL ORDER.

See CHARTER.

DEED.

See CONSTRUCTION,
FRAUDULENT CONVEYANCE,
MORTGAGE,
PURDAH WOMEN,
REGISTRATION.

DEED OF GIFT.

In the case of a document alleged to be a deed of gift, the important words being, "I have adopted *Rana Jeswunt Sing* to succeed to my property and "title." *Held*, that the instrument was not to be treated as a deed of gift, there being a complete absence of any relinquishment by the donor, or of seisin by the donee. That it was not a testamentary gift to take effect after the death of the donor, and that the document had no effect or operation whatever in giving any right of property to *Jeswunt Sing—Jeswunt Singjee Urby Singjee and another* v. *Jet Singjee Urby Singjee.* Vol. 3, p. 245.

See REGISTRATION.

DEFACED INSTRUMENT.

See EVIDENCE.

DEFAULT.

See TENDER.

DELAY.

See ALLUVIAL LANDS,
EVIDENCE,
REVIEW OF JUDGMENT,
SPECIAL LEAVE TO APPEAL.

DELHI, EX-KING OF.

In the peculiar circumstances of the case in which the Government of India took upon itself to pay out of the assets of the Ex-King of Delhi such claims as could be established against the Ex-King, if a claim be made which is found to be barred by the letter of any Regulation or Act of Limitation, the Government of India may well say, that they did not take upon themselves to provide for the payment of State demands, and that they are entitled to the benefit of any rule of Limitation of that kind. Subject, however, to these observations, any

claim which justly and fairly, in equity and conscience, can be made and substantiated against the Ex-King, is a claim to be allowed in the investigation which the Government has instituted before its judicial officers, irrespective of technical difficulties which may have attended legal proceedings against the King during his sovereignty, leaving, of course, the question of the payment of that claim, when established, to be dealt with in reference to the assets out of which the payment is to be made.—*Lalla Narain Doss* v. *The Estate of the Ex-King of Delhi.* Vol. 11, p. 277.

DEMAND.

See DOWER.

DEMURRER.

A decision of the Supreme Court of Calcutta allowing a general demurrer for want of equity to a bill filed therein, overruled, the Court considering, that although, a great length of time had elapsed since the right to sue arose, the bill required a plea or answer, as though it was unquestionably true that there were cases in which length of time, the lapse of time appearing on the bill, since the right to sue arose, might be effectual in favor of defendants on a demurrer, yet in such cases, especially where the bar was not statutory, and in this case it was not statutory, must be perfectly clear, and in this case it was not so clear upon the bill that time had operated as a bar, so as to render it right to allow the demurrer on such a ground. The demurrer was overruled without costs, and without prejudice to the right of the demurring defendants to insist upon the same ground of defence by way of answer.—*Sree Mutty Brindasoondery Dossee and another* v. *Rooderpersaud Mookerjee and others.* Vol. 7, p. 4.

See RES JUDICATA.

DEPOSIT.

See MORTGAGE.

DEPOSIT OF TITLE DEEDS.

See LIEN.

DESCENT.

See CUSTOM,
JOINT UNDIVIDED HINDOO FAMILY,
RAJ.

DETERMINATION.

See CHARTER.

DEVISE.

See ADOPTION,
HINDOO LAW.

DIGNITIES.

The usurper of a dignity is guilty of a wrong which is, to a certain degree, prejudicial to every one who has a just title to the dignity; and the manner in which such a wrong is to be redressed must depend upon the Municipal Laws of each particular country.

There may be no remedy, except by application to the Executive Government, to punish the usurpation, or there may be a remedy to every one whose dignity is lowered by the usurpation in a right of action against the usurper.

Although in England an action may not be maintainable by the grantee of a dignity from the Crown against a person, who, without a grant, should assume the like dignity: it does not necessarily follow that such is the law in Bombay.

In a suit brought by the appellant in the Zillah Court of Dharwar against the respondent, alleging that the privilege of *Adavi palki*, viz, of being carried on ceremonious occasions in a palanquin borne crossways, belonged exclusively to him, the appellant, as heir or successor of the Swamis of Sringiri, and asserting that the respondent had infringed his rights by the assumption of the right in question, the damages for the alleged injury being laid at Rupees 15,000, and an order, in the nature of an injunction, being prayed to restrain the respondent for the future from being carried in a palanquin crossways. *Held*, that the course to be pursued by the Courts below was, First to consider whether, assuming the facts alleged to be true, they had jurisdiction to entertain the suit, and, if they had, then, giving the parties the opportunity to adduce their evidence, to see whether

the right claimed by the appellant was established, and that claimed by the respondent negatived. That, appellant having proposed to examine certain witnesses, some of whom had enjoyed sovereign authority in the territory over which the disputed right was to be exercised, the proposed questions going directly to establish, as alleged by the appellant, the grant of the privilege and the exercise of it, and to prove that no such right had been exercised by the respondent or his predecessors, and there appearing great reason to believe that the evidence of these witnesses might have been obtained in a shape in which it would have been admissible, such witnesses should have been examined.

The defence that this action was not maintainable not having been taken in the Courts below, nor considered by the Judges below, and no authorities from the law of Bombay being cited. The Judicial Committee of the Privy Council declined to take upon themselves to decide whether or not the action was maintainable.—*Sri Sunkur Bharti Swami* v. *Sidha Lingayah Charanti.* Vol. 3, p. 198.

DISCHARGE.

See ESCAPE,
NOVATION.

DISCRETION.

See COSTS,
COMPROMISE.

DISHERISON.

See WILL.

DISQUALIFIED LANDHOLDER.

The provisions of such a Law as Bengal Regulation No. LII of 1803, should be strictly pursued, in order to effect the disqualification of any particular person; and no one should lose her natural liberty of contracting debts unless the relation of ward and guardian between her and the Court of Wards be regularly and completely constituted.

A Talook being under charge of the Court of Wards, it does not necessarily follow that the female owner is a disqualified person; the Court of Wards may have obtained the custody originally under circumstances not affecting her personally, and may have continued in charge after the estate devolved upon her under circumstances which do not necessarily make her a disqualified female under Regulation No. LII of 1803.

In the suit before the Court, *Held*, that the respondent was not at the date of the execution of the bond sued on incapable of binding herself by contract by reason of her estate being still in the custody of, or under the charge of the Court of Wards.—*Mohummud Zahoor Ali Khan* v. *Mussumat Thakooranee Rutta Koer and others.* Vol. 11, p. 468.

DISTANCE.

See LIMITATION.

DISTRAINT, ILLEGAL.

See JURISDICTION.

DIVIDED FAMILY.

See DIVISION,
JOINT UNDIVIDED HINDOO FAMILY.

DIVIDED PROPERTY.

See TENANCY IN COMMON.

DIVISION.

A division may be effected without instrument in writing.

A division may be either total or partial.

A separation from commensality does not, as a necessary consequence, effect a division, or, at least, of the whole undivided property.—*Rewun Pershad* v. *Mussumat Radha Beeby.* Vol. 4, p. 137.

See JOINT UNDIVIDED HINDOO FAMILY,
NATIVE CHRISTIANS,
NEW SUIT,
PARTITION,
POLLIAM TENURE,
RAJ,
WIDOW,
WILL.

DIVORCE.

By the Mahomedan Law divorce may be made in either of two forms; *Talâk* or *Khoola*.

A divorce by *Talâk* is the mere arbitrary act of the husband, who may repudiate his wife at his own pleasure, with or without cause; but, if he adopts that course he is liable to repay her dowry or *dyn mohr* and, as it seems, to give up any jewels or paraphernalia belonging to her.

A divorce by *Khoola* is a divorce with the consent, and at the instance, of the wife, in which she gives or agrees to give a consideration to her husband for her release from the marriage tie. In such a case the terms of the bargain are matters of arrangement between the husband and wife, and the wife may, as the consideration, release her *dyn mohr* and other rights, or make any other agreement for the benefit of the husband.

According to existing usage a divorce by *Talâk* is not complete and irrevocable by a single declaration of the husband; but a divorce by *Khoola* is at once complete and irrevocable from the moment when the husband repudiates the wife, and the separation takes place. In these particulars the two modes of divorce differ.

There is one condition which attends every divorce, in whichever way it takes place, *viz.*, that the wife is to remain in seclusion for a period of some months after the divorce, in order that it may be seen whether she is pregnant by her husband, and she is entitled to a sum of money from her husband, called her *iddit*, for her maintenance during this period.

The divorce is the sole act of the husband, though granted at the instance of the wife, and purchased by her.

The *Khoolanamah* is a deed securing to the husband the stipulated consideration, but it does not constitute the divorce. It assumes it, and is founded upon it. The divorce is created by the husband's repudiation of the wife, and the consequent separation. The law might have provided that non-payment of the consideration should invalidate the divorce, but the law is otherwise. The non-payment by the wife of the consideration for the divorce no more invalidates the divorce than in England the non-payment of the wife's marriage portion invalidates the marriage.

In a suit brought by the respondent to recover her *dyn mohr*, the appellant, the husband, while denying a divorce by *Talâk*, not only did not deny, but set up a divorce by *Khoola*. *Held*, that the dissolution of the marriage being admitted, it was for the appellant, the husband, to make out that the respondent had given up the rights which *primâ facie* result from the dissolution; and two instruments being relied on by the appellant, one an *Ikrarnamah*, or instrument by which the wife was made, out of regard and affection for her husband, voluntarily to release to him all claim to her *dyn mohr*, and a *Khoolanamah* which professed to confirm the *Ikrarnamah*, the decision of the Lower Court to the effect that the evidence of the genuineness of the *Ikrarnamah* was utterly defective, and that the execution of the *Khoolanamah* was not a voluntary unrestrained act, and that the instruments had no legal effect, was upheld.—*Moonshee Buzul-ul-Raheem* v. *Luteefut-oon-nissa*. Vol. 8, p. 379.

See DOWER.

DOCUMENTS.

See EVIDENCE.

DOMICIL.

See CHILDREN.

DOOR, BREAKING OPEN OUTER.

See FALSE IMPRISONMENT.

DOUBTS.

See EVIDENCE,
WILL.

DOWER.

The marriage of the respondent *Moorad-oon-nissa* with a deceased Mahomedan of the Shiah or Immameeah sect, one *Seynd Moostefah*, and a deed fixing her dower at the sum of Rupees 46,000 being established, and it being contended that the form of the deed by the Mahomedan Law was to make the dower exigible immediately, not only due, but at once demandable, and that

the claim was barred by Limitation, the 12 years' period of Limitation having expired during the lifetime of the husband. *Held*, (the terms of the deed being "when demanded by my wedded wife,") that the wife had a right of suit without a previous demand. That she was not obliged to sue her husband immediately, or in his lifetime, and that the claim was not barred by Limitation. And further, the claim being made by the plaintiff, the appellant, as sole heir, against the respondents charging them with collusion in keeping him out of possession, and not claiming in the alternative, that if the marriage of the respondent *Moorad-oon-nissa* and the deed were proved, then that he might have his share of the estate, and he not having asked for an account, that the Lower Court took the right and convenient course in dismissing the suit, leaving the plaintiff to bring another suit to obtain an account.—*Ameer-oon-nissa and others* v. *Moorad-oon-nissa and others*. Vol. 6, p. 211.

Whatever the general law may be, the mode in which contracts of this description are to be treated in Oude, has been settled by specific regulations issued by competent authority.

The principles of law, as well as the rules of procedure, laid down in the Punjab Code are to be adopted as the basis of the administration of justice in Oude, and are to be applied as far as they may appear to the Commissioners to be not unsuited to the circumstances of the country; but that as far as they are founded upon local customs, varying the general law, whether Hindoo or Mahomedan, they are not to be applied to Oude, where the local customs would probably differ from those of the Punjab.

The 10th Clause of Section 6, of the Punjab Code, provides for a modification of the dower mentioned in a marriage contract both in the case of a divorce and of the death of the husband, and is in these words: "By the Hindoo and "Mahomedan Law, the dower of a married woman, if not entirely paid up at "the time of marriage, is claimable by "her at any subsequent time, and especially in the event of a divorce. "Among Mahomedans it is usual, as a "safeguard against capricious divorces, "to stipulate for an amount of dower "far beyond the means of the bride-'groom to pay. Such contract, if 'enforced by a Court, would ruin a 'defendant who had divorced his wife 'without reflecting on the liability to 'which he was subject. Still, although 'the full amount need not be decreed, 'yet, in the event of a divorce without 'a valid cause, heavy damages will be 'awarded to the wife in proportion to 'the means of her husband.'

The 11th Section provides for the event of the husband's death, *viz.*: "At "the husband's death the dower is "treated as a debt, and takes precedence of the claims of heirs, but not "of other debts; it stands on the same "footing with them. In this case the "Court would possess the modifying "power of Clause 8 (*Query* 10,) and "award to the widow a fair sum, with "reference to the assets of the estate, "and the circumstances of the heirs."

These sections provide for the mode in which all contracts of this description which may come before the Courts in which the Punjab Code is in force, are to be treated.

The Oude Courts having disallowed a claim of the appellant for payment of dower amounting to a crore of rupees out of the estate of her deceased husband, and having directed the estate to be divided in certain shares between the appellant and the respondents, (the son, adopted son, and daughters of the deceased husband,) *Held*, that the Courts below were bound to apply the provisions of the Punjab Code to the case, and were at liberty to exercise a discretion in the division of the property in dispute between the widow and the heirs; and that, as to the manner in which that discretion should be exercised, the Commissioner whose judgment was appealed from must be more capable of forming a correct judgment than the Court of the Judicial Committee of the Privy Council could be.—*Mulkah Do Alum Nowab Tajdar Bohoo* v. *Mirza Jehan Kudr and others*. Vol. 10, p. 252.

Held, that the claim of the appellant, a widow, to hold certain landed property belonging to her deceased husband to satisfy her dower, could not be founded upon an original hypothecation of the estate for her dower, for such a right does not arise by the Mahomedan Law as a consequence of the gift of dower. That there was no agreement on the

part of the husband to pledge his estate for the dower, but, that the appellant having obtained actual and lawful possession of the estates under a claim to hold them as heir and for her dower, she was entitled to retain that possession until her dower was satisfied, and that the respondents could not recover the possession of their shares until that satisfaction had taken place.

Declared that the dower agreed to be given on the marriage of the appellant with her deceased husband was the deferred dower of Rupees 40,000, and one gold mohur, and that the appellant, being in possession of the estate of her said deceased husband, was entitled to retain such possession until the whole of what was due to her in respect of such dower had been paid and satisfied.—*Mussumat Bebee Bachun and others* v. *Sheikh Hamid Hossein and another.* Vol. 14, p. 377.

See DIVORCE,
VOLUNTARY PAYMENT.

DURESS.

In a suit to recover possession of certain lands with mesne profits, and to set aside a deed of sale alleged, in effect, to have been obtained from the plaintiff whilst under duress, not only of goods, but of person,—personal restraint, and danger to his life and reputation. *Held*, reversing the decree of both the Lower Courts, that not only did the evidence fall very far short of proof that the plaintiff was subjected to personal violence of the nature and degree stated in the plaint, but that it was insufficient to warrant the general conclusion that the deed was forcibly taken from him.

Plaintiff in such a case cannot insist that he was subjected to such personal duress as destroyed his free agency and entitled him to treat his deed as a mere nullity. He cannot both avoid the contract, and retain the consideration money.

A contract being complete, plaintiff can only be relieved from it in a suit properly framed for that purpose upon proof of facts entitling him to that relief, and upon the terms of accounting for the consideration money with interest.

Whether he might have succeeded in establishing a case for equitable relief the Court was not in a position to say, since no such case had been alleged or proved.—*Guthrie* v. *Abool Mozuffer and others.* Vol. 14, p. 53.

See EVIDENCE,
PURDAH WOMEN.

DWYAMUSHYAYANA.

See ADOPTION.

EAST INDIANS.

See CHILDREN,
NATIVE CHRISTIANS.

ECCLESIASTICAL JURISDICTION.

See RESTORATION OF CONJUGAL RIGHTS.

EJECTMENT.

See SEQUESTRATION,
TENANCY IN COMMON.

ELDEST SON.

See ADOPTION,
FAMILY USAGE OR CUSTOM,
GHATWALLY TENURE,
PRIMOGENITURE,
RAJ.

ELECTION.

See WAIVER.

ENAM.

The word *Enam* originally meant a *Grant* generally, and such grants were of various descriptions, as an *Altumgha Enam*, which meant a grant in perpetuity, not resumable by the Zemindar.—*Unide Rajaha Raje Bommarauze Bahadur* v. *Pemmasamy Venkatadry Naidoo and others.* Vol. 7, p. 128.

See ENHANCEMENT OF RENT,
HEREDITARY OFFICES,
MAHOMEDAN LAW.

ENCROACHMENT.

In a suit for possession and enhancement of rent brought by the plaintiff, the Putneedar, against the defendant, the Ghatwal, and the Government; on

the ground of encroachment of lands in his Talook not held *Ghatwally*. *Held*, that the plaintiff had failed to prove the alleged encroachment.—*Farquharson* v. *Dwarkanath Singh and others*. Vol. 14, p. 259.

See LIMITATION.

ENDORSEMENT.

See NEGOTIABLE INSTRUMENT,
PARTNERSHIP.

ENDOWMENT.

See ADVERSE POSSESSION,
RELIGIOUS TRUST.

ENGLISH LAW.

See ALIENS,
APPEAL,
CHILDREN,
NATIVE CHRISTIANS.

ENHANCEMENT OF RENT.

The 5th Section of Bengal Regulation No. XLIV of 1793, (assuming that section to be unrepealed) provides, that when a Zemindary is sold at a public sale for discharge of arrears due from the proprietors to Government, "all engagements which such proprie-"tors shall have contracted with depend-"ent Talookdars whose Talooks may "be situated in the lands sold, as also "all leases to under-farmers, and pottahs "to ryots (with the exception of the "engagements, pottahs, and leases "specified in Sections 7 and 8,) shall "stand cancelled from the day of sale, "and the purchaser or purchasers of the "lands shall be at liberty to collect "from such dependent Talookdars, and "from the Ryots or cultivators of the "lands let in farm, and the lands not "farmed, whatever the former proprie-"tor would have been entitled to de-"mand according to the established "usages and rates of the Pergunna or "District in which such lands may be "situated had the engagements so can-"celled never existed," but the 7th Section provides, that this is not to authorize the assessment of any increase upon the lands of such dependent Tolookdars as were exempted from increase at the Decennial Settlement of 1793. *Held*, that the meaning of the words "stand cancelled from the day of sale," was properly to be collected from the policy and intent of the regulation, from the language used in other parts of the same section, and from the 7th Section. That the object of the Government was, that the jumma should be duly paid, and that the means of paying it should not be withdrawn by the improvident grants of the Zemindars who had made default. That cases of default might often arise where no improvident grant had been made, where the Talookdars and Ryots held at proper rents, and the default was owing to extravagance, mismanagement, or other causes; in which cases the Government could not be supposed to have intended a wanton and unjust disturbance of vested interests. That, looking at what followed in the same clause, it was obvious that no absolute cancellation was intended. That the language in Section 7, showed that what was aimed at by Section 5, was not the destruction of tenure, but the increase of rent under certain specified and equitable limitations. That the construction of Section 5, was, that a power was given by it to the purchaser at a Government sale for arrears to avoid the subsisting engagements as to rent, and to increase the rent to that amount at which, according to the established usages and rates of the Pergunna or District it would have stood had the cancelled engagement so avoided never existed. That a construction which would render the title to property unnecessarily uncertain ought not to be given to a power of this description, and that in the present case the section in question did not authorize enhancement.—*Ranee Surnomoyee* v. *Maharajah Sutteeschunder Roy Bahadoor*. Vol. 10, p. 123.

A suit was instituted by the appellant to obtain a decree for the enhancement of rent under Bengal Regulation No. V of 1812, Sections 9 and 10, as modified by Act 8 of 1848, in respect of five Talooks held by the respondents of the appellant, who had derived his title to the larger part of the Zemindary in which the Talooks were situated as purchaser at a sale for arrears of Government Revenue, which took place in 1819. The Judicial Committee of the Privy Council on appeal confirmed the decision of the Lower Appellate Court (confirmed by the Sudder Dewanny Adawlut on special

appeal,) dismissing the suit on the ground that the defendants had established by evidence that each Talook had a fixed and invariable rent for more than twelve years anterior to the perpetual settlement, and was consequently not liable to further assessment.—*Baboo Gopal Lall Thakoor* v. *Teluck Chunder Rai and others.* Vol. 10, p. 183.

The sales to the purchasers through whom the respondents claimed having taken place in 1837 and 1839, under Bengal Regulation No. XI of 1822, the 30th and three following sections of which defined the rights of the purchasers. *Held*, that the respondents had not established their right to enhance the rent of the lands held by the appellant.

The absence of words importing the hereditary character of the tenure here, as in the case of *Baboo Gopal Lall Thakoor* v. *Teluck Chunder Rai* (Vol. 10, p. 191.) *Held*, to be supplied by evidence of long and uninterrupted enjoyment, and of the descent of the tenure from father to son, whence that hereditary character might be legally presumed.—*Rajah Suttosurrun Ghosal* v. *Moheshchunder Mitter, and Rajah Suttosurrun Ghosal* v. *Tarinee Chunder Ghose.* Vol. 12, p. 263.

The Government claimed a right to increase the assessment on one who held under an ancient and permanent tenure, by reason of a default, not arising from himself, or any person holding his share, and further alleged, that the village though enjoyed in shares, was held jointly, and not in severalty, and that, therefore, the respondent's share was liable for the default of other shareholders. *Held*, that it lay upon the Government to prove by what authority this increase in the amount of rent had been made. That the ordinary remedies for revenue in arrear fell short of such a power, and that the non-payment of revenue may arise from causes implying only the misfortune of the holder, and that in reason and justice, in the absence of contract or consent, a forfeiture should not be implied from a mere default of that nature, still less should the terms of an instrument alleged to evidence a right to declare a forfeiture be constructively enlarged.

Held, that Madras Regulation No. IV of 1831, which must be construed strictly, applies only to suits brought to try the validity of grants emanating from, or confirmed, or affected by, the direct Act and order of the Governor in Council, and that no proof existing in the case to bring this *Enam* claim within the provisions of Madras Regulation No. IV of 1831, there was no want of jurisdiction in the Court below in entertaining the complaint without a written order of the Governor in Council under such Regulation.—*Brett* v. *Ellaiya.* Vol. 13, p. 104.

A suit to enhance rent proceeds on the presumption that a Zemindar holding under the perpetual settlement has the right from time to time to raise the rents of all the rate-paying lands within his Zemindary, according to the pergunna or current rates, unless either he is precluded from the exercise of that right by a contract binding on him, or the lands in question can be brought within one of the exemptions recognized by Bengal Regulation No. VIII of 1793, and it also assumes that the defendant has some valid tenure or right of occupancy in the lands which are the subject of the suit.

Before the recent modification of the law (Act 10 of 1859 not having come into operation when the suit was commenced and consequently not affecting the case,) the effect of this presumption was undoubtedly to relieve the plaintiff in a suit for enhancement from much of the burthen of proof which would have laid upon him in an ordinary suit, and to shift it upon the defendant. Regulation No. VIII of 1793, however, does not apply an uniform rule to all tenures and rights of occupancy. It may be broadly said, that it divides them into two great classes, *viz.*, *Talooks* within the meaning of its 51st Section, and *Ryotty* and other under-tenures, for which provision is made by the 49th Section. If it be conceded that the law casts upon those who claim the benefit of the latter section the whole burthen of proving that their land has been held at a fixed rent for a period commencing at least 12 years before the date of the Decennial Settlement, it is clear, that the 51st Section is more favorable to the holders of *Talooks* within its meaning, by imposing upon the Zemindar the burthen of showing that he is entitled to raise the rent either by special custom, or by contract,

or by reason of certain specified conduct on the part of the Talookdar. It follows that in every suit for enhancement of rent the nature of the tenure is a material question, irrespective of the question whether the rent is fixed or variable, since upon the former question depends the extent and nature of the proof which the plaintiff is bound to give.

The effect of the authorities in India seems to be, that although for several years it was held by the late Sudder Dewanny Adawlut, that in order to bring a *Talook* within the scope of the 51st Section of Regulation No. VIII of 1793, it must be shown to have been *registered*, *recorded*, or *recognized* at the time of the Decennial Settlement, that construction is no longer recognized as law by the High Court, and, that it is, at all events sufficient to show, that the tenure existed, and was capable of being registered at the date of the Decennial Settlement.

The Court of the Judicial Committee of the Privy Council finding, as a fact, that the tenure of the property in suit was a dependent *Talook*, within the meaning of the 51st Section of Regulation No. VIII of 1793, the effect of such finding is to cast upon the Zemindar the burthen of showing that the rent is variable, and if there is no evidence of that fact in the case, the suit must fail.—*Bamasoondery Dassyah and others* v. *Radhika Chowdhrain*. Vol. 13, p. 248.

See TALOOKDARY TENURE.

EQUITABLE CHARGE.

See SALE BY SHERIFF.

EQUITABLE LIEN.

See LIEN.

EQUITABLE MORTGAGE.

See LIEN,
MORTGAGE.

EQUITY OF REDEMPTION.

See ESCHEAT,
MORTGAGE,
SALE FOR ARREARS OF REVENUE.

EQUITABLE OWNER.

See CONFISCATION.

EQUITY AND GOOD CONSCIENCE.

See CHILDREN,
LIEN,
MORTGAGE,
NATIVE CHRISTIANS,
PRACTICE.

ESCAPE.

If a sheriff, upon the representation of a defendant, in his custody under a writ of *Ca. sa.* that he is suffering very severely in health, takes upon himself to make a relaxation of the imprisonment, and permits the defendant accompanied by ever so many of his own officers to go and reside in a house of his own, it will be an escape.

A sheriff having taken a person in execution under a writ of *Ca. sa.* is bound to keep him in his own gaol, and cannot of his own authority allow the prisoner to make a gaol for himself. He is bound to keep him *in arcta et salva custodiâ* in order to enforce payment of the debt, and if he relax that *arctam custodiam* at all, so far the pressure to compel the payment of the debt is relaxed also, which the sheriff has no right to do.

The plaintiff in any case, in order to be barred from continuing his execution, and from having the benefit of his judgment, must voluntarily discharge the defendant out of custody. If he does discharge him out of custody, if it be only for a week, he cannot, by any agreement which he may make with the defendant, afterwards re-take him, although the defendant may possibly have agreed that if he does not pay the money within a week he shall be re-taken.

Where a defendant in custody of the sheriff under a writ of *Ca. sa.* with his own consent, and the consent of the plaintiff, and of the sheriff, was on account of the state of his health allowed temporarily to reside outside the gaol, the sheriff's officers continuing all the time about the premises he occupied. *Held*, that the defendant was estopped from saying that the custody in which he then was, was not the custody of the sheriff, when both parties intended it to be so. That in point of law such custody should be treated as the custody

of the sheriff; and, it appearing that it was not the intention of either party that the defendant should be discharged, but that what was done was a matter of indulgence and kindness to him, that there was nothing in the law to prevent it from being a continuing custody of the sheriff by arrangement of parties.

A creditor may, under certain circumstances, or if he feels it to be really material and important to the debtor, change the place of imprisonment, and relax somewhat the rigor of imprisonment, without discharging the debtor from his debt, it clearly not being the meaning of either party that any such discharge should take place.

If a plaintiff intimated to a sheriff that he was inclined to grant the indulgence to a prisoner that he might go to another house in custody of the sheriff's officers, the sheriff might refuse without a rule of Court for that purpose; but if the sheriff consented, he, when defendant was in the private house with the officers about him, might be liable to an action for escape, if it appeared that he had not used proper care, if he had removed his peons, or had employed persons who had not taken sufficient care to prevent the prisoner from escaping, still it would be, under all circumstances, for a jury to consider whether, being in some measure instrumental in it, the plaintiff ought to recover against the sheriff at all. It would be a question of fact to be decided under all the circumstances of the case.—*Haines* v. *The East India Company.* Vol. 6, p. 467.

ESCHEAT.

In a suit, in which the question raised was, the right of the Government to seize as an escheat a Zemindary in the Collectorate of Masulipatam, the property of a Hindoo of the Brahmin caste who died without heirs and without an adopted son. *Held*, that according to Hindoo Law the title of the king by escheat to the property of a Brahmin dying without heirs, ought, as in any other case, to prevail against any claimant who cannot show a better title; and that the only question that arises upon the authorities is, whether Brahminical property so taken is, in the hands of the king, subject to a trust in favor of Brahmins. That in this suit, where the issue was, between the Government claiming the property (whether subject to a trust or not,) by escheat, and a party claiming by an adverse title, it was unnecessary to decide whether the duty imposed upon the king was one of imperfect obligation, or a positive trust affecting the property in his hands, or whether, if a trust, it was or was not one incapable of enforcement by reason of the uncertainty of its objects. That it was unnecessary to decide concerning a distinction, or supposed distinction, between the Brahmins who have been called *Sacerdotal Brahmins* and the ordinary members of the caste. That the Court was not satisfied that the Sudder Court was not in error when it treated the appellant's claim as wholly and merely determinable by Hindoo Law, as they conceived that the title which he (on behalf of the Government) set up might rest on grounds of general or universal law. That, according to the law administered by the Provincial Courts of British India, on the death of any owner, being absolute owner, any question touching the inheritance from him of his property is determinable in a manner personal to the last owner; but when it is clearly made out that by the law applicable to the last owner, there is a total failure of heirs, then the claim to the land ceases to be subject to any such personal law; and as all property not dedicated to certain religious trusts must have some legal owner, and there can be, legally speaking, no unowned property, the law of escheat intervenes and prevails, and is adopted generally in all the Courts of the country alike, and, private ownership not existing, the State must be owner as ultimate lord, and consequently the claim of the Government in the present instance might have been considered with reference to this principle. That the Court's opinion was favorable to the general right of the Crown to take by escheat the land of a Hindoo subject, though a Brahmin, dying without heirs; and that the claim of the appellant to the Zemindary in question (subject, or not subject, to a trust) ought to prevail, unless it had been absolutely, or to the extent of a valid and subsisting charge, defeated by the acts of the widow of the last owner in her lifetime, in which case the Government would be entitled to the property subject to the charge.

There being no sufficient materials before the Court to enable it to decide upon the questions raised as to the

nature and the validity, or otherwise, of the acts of the widow during her lifetime, it was recommended that the case should be remitted back to India for further hearing, with a declaration that the general right of the Government by escheat (subject, or not subject, to a trust) had been established.—*The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah*. Vol. 8, p. 500.

The Government having declared that a certain *Polliam* had escheated by the failure of male heirs to the last *Polligar* in possession, and the respondent, the daughter of such last *Polligar*, having instituted a suit in the Civil Court of Madura against the Collector of Madura and three others, defendants, for the recovery thereof, with mesne profits, the Sudder Dewanny Adawlut at Madras decreed to the effect, that the defendant was precluded from challenging the succession of females to the estate in issue by the Acts of the Revenue Board, representing the Government, and held that no ground appeared for interfering with the decree of the Civil Judge, who had ruled, that the plaintiff had been declared the heir and successor to her father's estate after the death of her step-mother, and that though the first defendant, the Collector of Madura, on the plea that it was not usual for females of the *Cumbala Tottier* caste to succeed to estates, had prevented her being put in possession of the *Polliam*, he the said defendant had entirely failed to show that such custom had either the force of law, or was acted up to. Such decree held to be perfectly right.—*The Collector of Madura* v. *Veeracamoo Ummal*. Vol. 9, p. 446.

A Hindoo widow having mortgaged her husband's estate for advances for which she was entitled to alienate the estate as against the next heirs of the husband, if any such had existed, and the Crown having taken the estate by way of escheat for want of heirs. *Held*, that the Crown took merely an equity of redemption, and that the mortgagee was entitled to hold the estate against the Crown as a security for so much of the mortgage monies advanced and interest as remained unpaid.

In such a suit the mortgagee has to sustain an extraordinary burthen of proof, *viz.*, that he has a charge on the estate by the act of the widow, and that the debt charged is of a particular character, but, he having shown that such a debt once existed, it does not follow that, because the Crown has the right to demand this peculiar proof, the ordinary rule, which requires the party who alleges payment to prove payment, is to be inverted in the Crown's favor, or that the debt is to be presumed to be satisfied unless the contrary is shown by the creditor; and the burthen of proof that the settlement of accounts in respect of the advances upon which the mortgage was based, was not a *bonâ fide* transaction between the debtor and the creditor, was in this case held to be upon the Crown.—*Cavaly Vencata Narrainapah* v. *The Collector of Masulipatam*. Vol. 11, p. 619.

In a suit brought by the Government to establish the title of the Government, on the ground of an escheat for want of heirs, to certain landed property, and to eject the person in possession thereof. *Held*, that the suit was an ordinary suit in the nature of an ejectment. That the Government could only recover by the strength of their own title, and that it lay upon them to prove, at least *primâ facie*, that the person under whom they claimed died without heirs; and that, on the other hand, the person in possession was entitled to defend his possession not only by proof of his own title, but by setting up any *jus tertii* that might exist.—*Gridhari Lall Roy* v. *The Bengal Government*. Vol. 12, p. 448.

See SOVEREIGN POWER, WIDOW.

ESTATE OF INHERITANCE.

See TENURE.

ESTOPPEL.

In a case of fraudulent misdealing with property pledged, the fraudulent parties are estopped or precluded by their acts from setting up, as against a third person, the mortgagor, the object of their fraud, and a stranger to the agreement, the illegality of the agreement itself. The mortgagor is entitled to say this agreement is the real contract. —*Nawab Sidhee Nusur Ally Khan* v. *Rajah Ojoodhyaram Khan*. Vol. 10, p. 540.

Held, that a deed of conditional sale and mortgage created no estoppel. That

it was the case of a common mortgage in which the defendant says the money was never advanced. That it is open to a mortgagor to deny that the money, the receipt of which is formally acknowledged under his hand and seal, was advanced, and to cut it down to a nominal sum or nothing, and, that being so, and the instrument being relied on by a person out of possession seeking to obtain possession through the medium of a foreclosure suit, that there was nothing whatever to prevent the defendant from showing the real truth of the transaction.

It is clear that a pleading by two defendants against the suit of a certain plaintiff never can amount to an estoppel as between them and another plaintiff in a different suit.—*Ram Surun Singh and another* v. *Mussumat Pran Peary and others.* Vol. 13, p. 551.

Assuming that respondent did intend by a certain petition in a pending suit to convey a present interest in certain property which she supposed or assumed she had, there is no principle of law or justice by which that can prevent her setting up her real right when that right has accrued.—*Mussumat Oodey Koowur* v. *Mussumat Ladoo and others.* Vol. 13, p. 585.

See ANNUITY,
ESCAPE,
EVIDENCE,
MORTGAGE,
RES JUDICATA,
WIDOW.

EVIDENCE.

Appellant alleged that a razeenamah had been extorted from him by menaces and duress. *Held,* that the *onus* was upon the appellant to satisfy the Court that there was such a case of duress or fraud by which the razeenamah was obtained. That it was not sufficient to say that it was a case of doubt, that it was not perfectly clear that the appellant was a free agent, that there might be suspicions as to the conduct of the other party, or that there was a possibility and that there might be ground for the conclusion that it was not his own act; and that mere possibility, or even probability, that there might have been such an origin of the transaction was not sufficient to entitle the Court to set aside the razeenamah.

Appellant having alleged that he has not had an opportunity of giving his evidence to the Court below, it lies upon him to show that he was ready to produce evidence, and offered that evidence, and that the Court rejected it.—*Motee Lal Opudhiya* v. *Juggurnath Gurg.* Vol 1, p. 1.

An appellant seeking to recover from the defendant a property of which he is in possession, is bound to show to the satisfaction of the Court that he has a just title to the possession; and an appellant alleging that the possession of the respondent and of her predecessors, was legally his own, and that the persons in the actual occupation or receipt of the profits were his agents and received them on his account; is bound to prove the affirmative.

There is no better criterion of the truth, no safer rule for investigating cases of conflicting evidence, where perjury and fraud must exist on the one side or the other, than to consider what facts are beyond dispute, and to examine which of the two cases best accords with those facts, according to the ordinary course of human affairs and the usual habits of life.

Public Registers under Bengal Regulation XXXVII of 1793, are not of the nature of conclusive evidence of title, yet as the act of registration after a proclamation amounts to a public, open, and notorious assertion of title on one side, an unexplained omission to register affords an equally strong presumption of the non-existence of any title on the other.—*Meer Usd Oollah* v. *Mussumat Beeby Imaman.* Vol. 1, p. 19.

The proposition that one party by producing his books of account can, by those alone, bind the other, is utterly untenable.—*Sorabjee Vacha Ganda* v. *Koonwurjee Manikjee.* Vol. 1, p. 47.

An unsigned paper by which a person who agreed to the contents of that paper admitted that he owed the amount therein mentioned, received in evidence as an acknowledgment in a suit for recovery of the debt admitted by such acknowledgment.—*Eduljee Framjee* v. *Abdoolla Hajee Cherak.* Vol. 1, p. 461.

A recital in a will of a power of attorney. *Held,* not to be of itself sufficient evidence of such power of attorney, there being no proof of the power, or of any circumstance which

might have enabled the Court to presume the existence of such a power.—*Bomanjee Muncherjee* v. *Syud Hoossain Abdoollah.* Vol. 1, p. 494.

An appellant's conduct in making first a claim on behalf of the infant representative of a deceased person, to certain property, and not until that failed, making any claim on behalf of himself, is a strong argument against a claim to such property, subsequently set up by the appellant on his own account.—*Pandoorung Bullal Pundit* v. *Balkrishen Hurbajee Mahajun.* Vol. 2, p. 60.

The testimony of a witness, resting his evidence as to an assessment of mesne profits upon the fact, that he used to see the accounts, cannot be received as evidence of the fact of the assessment having been to that amount. The witness not making the assessment, and borrowing his knowledge from seeing the accounts only, his testimony is not receivable as evidence of the actual amount of the assessment.—*Sooriah Row* v. *Rajah Enoogunty Sooriah.* Vol. 2, p. 72.

Where, after the assertion of a title on the one side and the denial of it on the other, a compromise is entered into, in the presence of many witnesses, by parties on the spot, and solemnly acknowledged by the parties in a Court of law to have been voluntarily executed, the burthen of showing that it has been fraudulently obtained by false representation is cast upon those who seek to impeach the validity of their own deed.—*Rajunder Narain Rae and another* v. *Bijai Govind Sing.* Vol. 2, p. 181.

The provisions respecting evidence in Statutes 6, Geo. 4, cap. 16, and 2 & 3, Will. 4, cap. 114, passed to facilitate the proof of bankruptcy and assignment in the Courts in England, do not extend to the Courts of India: and in those Courts evidence must be given such as would have been required to prove the facts had no such statutory regulations been made.

A paper, purporting to be a copy of the proceedings in bankruptcy in England, endorsed with the signature of a person stated to be Clerk of the Enrolments, and sealed with a seal purporting to be that of the Court of Bankruptcy, no other proof being given of the trading, act of bankruptcy, or petitioning creditor's debt, or of the commisssion or assignment, or of the seal being that of the Court of Bankruptcy. *Held*, not to be sufficient proof of a bankruptcy in England, and assignment, to authorize the attorneys of the surviving assignee to sue the defendant in Calcutta for the amount due by him to the bankrupt upon certain promissory notes made by the defendant in favor of the bankrupt.

The introduction into the plea of the words *assignee as aforesaid* is not an admission that the plaintiff is entitled to sue as assignee, but only a reference to the description which he has given of himself.

The plea of *non assumpsit* puts the bankruptcy and assignment in issue without any notice.—*Clark* v. *Mullick.* Vol. 2, p. 263.

It being contended that a *Raj* was an indivisable *Raj*, and that the appellant as heir was entitled to succeed to the whole. *Held*, that the *onus* of proof, under the circumstances, was clearly upon the appellant.—*Ghirdharee Sing* v. *Koolahul Sing and others.* Vol. 2, p. 344.

In a suit for the recovery of certain real estate, wherein the principal point at issue was the legitimacy of the claimant, and wherein the Zillah Judge pronounced a decree, part of which was in the following terms: "After a most "attentive perusal of the whole of the "documents filed, and evidence taken in "this case, the Court is quite satisfied "that plaintiff has proved his claim to "the *Guddy* of *Amod*; for, independent of the evidence and documents "produced by the plaintiff, the strong "resemblance that *Jet Sing* bears to his "deceased father, the latter of whom "was personally known to the Judge "when alive, is so great as to leave no "doubt in the mind of the Court as to "his being his legitimate son." *Held*, that the decision of the Judge upon the personal resemblance of the plaintiff to his deceased father could not be received or acted on by a Court of Appeal.

The defendants summoned 58 witnesses in support of their case, and after the examination of 16 of these witnesses, there being considerable delay in the production of the remaining 42, the Court directed the defendants' vakeels to be asked what points these witnesses were to be called to prove, and upon receiving their answer, decided sum-

marily that it was unnecessary to examine more than 14 of the remaining 42 witnesses, 28 being to prove what had already been gone through by the first 16 witnesses, and the Lower Appellate Court having also refused to admit this evidence, upon the ground that its necessity was not made apparent to the Court. *Held*, that the rejection of the evidence, upon the supposition that it would go only to prove the same facts deposed to by the 16 witnesses previously examined, was wholly irregular, and detrimental to justice; and, with the observation that the decision of the Judge upon the personal resemblance of the plaintiff to his deceased father could not be received or acted upon by a Court of Appeal, the cause was remitted back to India.—*Jeswunt Singjee Urby Singjee and another* v. *Jet Singjee Urby Singjee*. Vol. 2, p. 424.

The respondent in a suit upon a bond, the execution of which was denied by the appellant, having stated that since the institution of the suit the bond had been accidentally destroyed by rats, and prayed the Court under the provisions of Madras Regulation XVII of 1802, Section 11, to admit a copy from the Registry Book, and the Court having granted the application, ordering the respondent's pleader to produce the fragments of the bond destroyed, and having admitted in evidence an office copy of the bond from the registry book, there being no evidence given of the destruction of the original, or that the scraps produced were portions thereof, and the Lower Appellate Court having based its decree thereon. *Held*, that such decree could not stand.—*Syud Abbas Ali Khan* v. *Yadeem Ramy Reddy*. Vol. 3, p. 156.

The *onus* of proving that a contract is governed not by general but by particular rules, lies upon the party asserting such to be the case.—*Maharaja Tej Chund Bahadur* v. *Sri Kanth Ghose and others*. Vol. 3, p. 261.

A statement in a *Rufanama* that the consideration money has been paid is evidence, not conclusive evidence, but evidence as far as it goes, and that *primâ facie* evidence of the payment having been rebutted by other evidence, the burthen of showing the payment lies upon the party setting up the same.

In estimating the value of evidence, the testimony of a person who swears positively that a certain conversation took place, is of more value than that of one who says that it did not, because the evidence of the latter may be explained by supposing that his attention was not drawn to the conversation at the time.—*Chowdry Deby Pershad and another* v. *Chowdry Dowlut Sing*. Vol. 3, p. 347.

The appellants having been put in possession of the property in dispute by the Foujdarry Court, and the respondents having been directed to bring a civil suit to assert their claim to such property, and having brought this suit accordingly. *Held*, that it was incumbent upon the respondents to prove some title to the land sued for, before the appellant was called upon to make out his title.—*Ram Rutton Rae* v. *Furrook-oonnissa Begum and another*. Vol. 4, p. 233.

Some evidence having been received by the Court below, which, by the rules of English Law, would not have been admissible, and some having been given in a different form from that which those rules would have rendered necessary. *Held*, that dealing with law as administered in Indian Courts by unprofessional Judges, the Court must look at the evidence which had been received and consider the effect which it ought to have produced.—*Mussumat Imam Bandi and another* v. *Hurgovind Ghose*. Vol. 4, p. 403.

Where the appeal involves a question of fact only, such as, whether a certain agreement set up by the defendants as a defence to the action is a genuine instrument or not; the fact that both the Courts below had decided against the instrument, is a fact which, considering the advantages the Judges in India generally possess of forming a correct opinion of the probability of the transaction, and in some cases of the credit due to the witnesses, affords a strong presumption in favor of the correctness of their decision, but does not, and ought not, to relieve the Court of last resort from the duty of examining the whole evidence and forming for itself an opinion upon the whole case.

The delay in instituting a suit for mesne profits payable yearly, at all events, if not half-yearly, for a lengthened period, is a circumstance requiring a very satisfactory explanation; for necessarily after the lapse of many years,

there must be great difficulty in ascertaining the truth of such a demand, not to mention the presumption against it for non-claim for a long time.—*Mudhoo Soodun Sundial* v. *Suroop Chunder Sirkar Chowdry*. Vol. 4, p. 431.

At a trial before the Supreme Court of Calcutta, various documents were read in evidence, which had been produced by virtue of a bill of discovery filed by the plaintiff against the defendants, although the defendants' answer which detailed the transactions to which such documents referred was not read. *Held*, that even supposing the answer ought to have been read, still before a new trial could be granted for withholding it, the defendants were bound to show that it might have materially influenced the verdict.—*The East India Company* v. *Oditchurn Paul*. Vol. 5, p. 43.

The plaintiffs, Bankers, having brought an action against the defendant, the son of a deceased customer, to recover a balance which they represented to have been due to them at the time of the death of their customer. *Held*, that the plaintiffs were wholly mistaken in the assumption that their books of account would be sufficient evidence to establish the debt. That the books could not without further proof be considered conclusive evidence, and that the documentary and parol evidence was wholly insufficient to maintain plaintiff's claim.—*Rai Sri Kishen* v. *Rai Huri Kishen*. Vol. 5, p. 432.

It is perfectly true that the regular proof of books and accounts, requires that the clerks who have kept those accounts, or some person competent to speak to the facts, should be called to prove that they have been regularly kept, and to prove their general accuracy; but circumstances may arise sufficient to remove an objection on the ground of the absence of that strict proof; and where, amongst other things, the genuineness of the books was not disputed, but, on the contrary, their general accuracy was admitted, and the accounts contained in the books had been for several months open to the inspection of the respondent, with power to him to point out any inaccuracies, and he produced no evidence whatever in opposition to plaintiff's claim, it was *Held*, that there was a *primâ facie* case for the establishment of the accounts, and that then the only question was, whether the particular items objected to in the accounts had been made out by the appellant, and whether a set off alleged on the part of the respondent had been established.—*Dwarka Doss* v. *Baboo Jankee Doss*. Vol. 6, p. 88.

A witness having been examined for the plaintiff without the presence of any vakeel or agent on the part of the defendant, and in the absence of the defendant himself, *Held*, that had that objection been taken at the right time, and in the right place, it would (to what extent might be questioned, perhaps,) be an objection which ought to prevail with respect to the evidence to which it applied. It not appearing, however, that any objection was taken to the reception of this evidence in the Zillah Court, (though before the Sudder Dewanny Adawlut there was in the petition of appeal some reference made to the examination of the witness in the absence of the defendant and those representing him.) The Court of the Judicial Committee of the Privy Council, conceiving that justice had been attained, refused to send the case again to the Court below; but an irregularity of such a serious nature as the admission of evidence in the absence of the vakeel of the defendant having taken place, their Lordships recommended that the appeal should be dismissed without costs.—*Rajah Bommarauze Bahadur* v. *Rangasamy Mudaly*. Vol. 6, p. 232.

In a suit wherein the Court considered the substantial dispute between the parties to be, whether the defendant could resist, under his title as mortgagee to the extent of that interest, the title of the complainant as heir and proprietor of the lands in suit. *Held*, that if the evidence disclosed no *primâ facie* case of charge at all on the ancestral estate, then, as the only bar to the resumption of the heir was the alleged mortgage title over it, the proof of which was on the mortgagee, the complainant's title to the estate and other relief was made out, but if, on the other hand, the evidence disclosed even a *primâ facie* case of charge, some enquiry should have been directed.

The question on whom does the *onus* of proof lie in such a suit as that of a mortgagee claiming under a mortgage executed by the manager of an estate during the infancy of the heir, is

one not capable of a general and inflexible answer. The presumption proper to be made will vary with circumstances, and must be regulated by and be dependent on them; thus, where the mortgagee himself with whom the transaction took place, is setting up a charge in his favor made by one whose title to alienate he necessarily knew to be limited and qualified, he may be reasonably expected to allege and prove facts presumably better known to him than to the infant heir, *viz.*, those facts which embody the representations made to him of the alleged needs of the estate, and the motives influencing his immediate loan. It is to be observed that the representations by the manager accompanying the loan as part of the *res gestæ*, and as the contemporaneous declarations of an agent, though not selected by the principal, have been held to be evidence against the heir; and such *primâ facie* proof has generally and reasonably and rightly been required in the Supreme Court of Calcutta, between the lender and the heir, where the lender is enforcing his security as against the heir. It is obvious, however, that it might be unreasonable to require such proof from one not an original party, after a lapse of time, and enjoyment, and apparent acquiescence.

In a case of a mixed character, the existing security representing loans and transactions at various times, and under varying circumstances—a consolidating security—as to part at least, *viz.*, the ancestral debt. *Held*, that there was ground to raise a *primâ facie* presumption in favor of the appellant, the mortgagee, of a consideration binding on the estate.—*Hunooman Persaud Panday* v. *Mussumat Babooee Munraj Koonweree.* Vol. 6, p. 393.

Justice requires that all the evidence which is material to the issue, and which the parties may desire to adduce, should be received before the rights of parties are disposed of, but the party complaining of rejection of evidence must satisfy the Court that such evidence was tendered and rejected.—*Modee Kaikhooscrow Hormusjee* v. *Cooverbhace and others.* Vol. 6, p. 448.

With regard to the admissibility of evidence in the Native Courts in India, no strict rule can be prescribed. However highly the rules of evidence as acknowledged and carried out in English Courts, may be valued, those rules cannot be applied with the same strictness to the reception of evidence before the Native Courts in the East Indies. The essential justice of the case must be looked to, and evidence not hastily rejected because it may not be in accordance with English practice.

A document bearing the certificate of the Collector to the effect that it was a copy of a document remaining in his office, it not appearing whether it was a copy of an original or of the copy of an original, *Held*, admissible in evidence.—*Unide Rajaha Raje Bommarauze Bahadur* v. *Pemmasamy Venkatadry Naidoo and others.* Vol. 7, p. 128.

The *onus* of proving a document, the effect of which would be to exonerate a party to an appeal from a proportion of the costs thereof, to which he would be otherwise liable, lies upon the party setting up the same.—*Bunwaree Lall* v. *Maharajah Hetnarain Sing and others.* Vol. 7, p. 148.

In an ordinary case, the party who presents an instrument, which is an essential part of his case, in an apparently altered and suspicious state, must fail, from the mere infirmity or doubtful complexion of his proof, unless he can satisfactorily explain the existing state of the document But this wholesome rule admits of exceptions, if there be, independently of the instrument, corroborative proof, strong enough to rebut the presumption which arises against an apparent and presumable falsifier of evidence. And such corroborative proof will be greatly strengthened if there be reason to suppose that the opposite party has withheld evidence which would prove the original condition and import of the suspected document.

One of the issues to be determined, being, what was the condition of the document when it was first produced by those who claimed under it, it was considered that the appellants, the parties producing the document, might fairly contend, that the rule above stated was not applicable to them until this question had been decided against them.—*Mussumat Khoob Conwur and others* v. *Baboo Moodnarain Sing and others.* Vol. 9, p. 1.

The Native Courts of India in receiving evidence did not proceed according to the technical rules adopted in Eng-

land, and they would, by their usual practice, admit a copy of a public document, authenticated by the signature of the proper officer, as *primâ facie* evidence, subject to further enquiry, if it were disputed.—*Naragunty Lutchmeedavamah* v. *Vengama Naidoo.* Vol. 9, p. 66.

In a suit in which the respondents, the plaintiffs, sought to eject the appellant, the defendant, from land of which he was in actual possession, the respondents being the parties who had to make out their case, and to prove their heirship, which depended upon the illegitimacy of the appellant. *Held*, that the respondents must give sufficient general evidence to throw upon the appellant the *onus* of proving his legitimacy.—*Khajah Mohamed Gouhur Ali Khan* v. *Ashruff-oon-nissa and others.* Vol. 9, p. 492; *Khajah Mohamed Gouhur Ali Khan* v. *Khajah Ahmed Khan.* Vol. 9, p. 504.

The burthen of proof held to be upon the appellant, but, under the circumstances, the Lower Court considered not right in determining the case upon the mere failure on his part to support the burthen of proof cast upon him. Case remanded for further enquiry.—*Rajah Lelanund Singh Bahadoor* v. *Maharajah Moheshur Singh Bahadoor and others.* Vol. 10, p. 81.

A plaintiff who alleges that his ancestor, 44 years before, made a mortgage to the ancestor of the present possessor of certain property; and by virtue thereof seeks to dispossess the present possessor, must prove his case clearly and indefeasibly. He must succeed by the strength of his own title, and not by reason of the weakness of his opponent's.

It would be contrary to all principles of law and justice, that upon such an allegation, a plaintiff should be able to require the present possessor to prove his title, and if he failed in doing so to dispossess him of the land in question. —*Sevvaji Vijaya Raghunadha Valoji Kristnan Gopalar* v. *Chinna Nayana Chetti.* Vol. 10, p. 151.

Although a long experience in Indian appeals has no doubt satisfied the Court that the presumption in favor of the genuineness of documents offered in evidence in that country is very weak, still it must not be held that the presumption is in favor of forgery; and when a long series of documents is produced showing a reasonable origin of title nearly a century before, a regular deduction of that title, and a possession consistent with it, confirmed by the all-important fact of such possession existing at the time of the commencement of the title by purchase set up, the evidence of intrinsic improbability should be very strong indeed which is to counterbalance the weight of such testimony.—*Wise and another* v. *Bhoobun Moyee Debia Chowdrainee and another.* Vol. 10, p. 165.

A Judge who decides in favor of a disputed Adoption or Will, in a case of questioned capacity of a dying man, must apply his mind not simply to the act of Adoption in fact, or to the execution in fact of a Will, but he must be careful to see that the jealous requisitions of the law as to the proof of acts of persons done *in extremis* are fully complied with.—*Tayammaul* v. *Sashachalla Naiker and another.* Vol. 10, p. 429.

A plaintiff having set up as part of his case, that at an auction sale in execution of decree the judgment debtors were the purchasers *Benamee* in the name of a third party of the property sold in execution, and were still in possession thereof as proprietors. *Held*, that the affirmative was upon such plaintiff, who must prove his case.

The power given to the High Courts by Act 8 of 1859, acting *ex mero motu*, and not at the instance of the parties, upon appeal to take original evidence anew, by the examination of other witnesses, should be exercised very sparingly; because, where it is done not at the instance of the parties but at the suggestion of the Court itself, witnesses may be called who are not the witnesses that the parties themselves would have thought fit to adduce, and it is possible that the new original enquiry by the High Court may be in itself imperfect, and not sufficiently extensive to answer the purposes of justice; and it is desirable that the reasons for exercising that power should always be recorded or minuted by the High Court on the proceedings.

Although there are in the evidence circumstances which may create suspicion, and doubt may be entertained with regard to the truth of the case made by one of the parties to the suit, yet it is essential to take care that the

decision of the Court rests not upon suspicion, but upon legal grounds established by legal testimony.—*Sreemanchunder Dey* v. *Gopaulchunder Chuckerbutty and others.* Vol. 11, p. 28.

If there be found, even in a native case, positive credible testimony unimpeached, and credited by a Judge competent to judge of the credit due to the witnesses, it would seem to be equivalent to a total disregard of native testimony, to say, despite of this positive testimony, we will put all evidence aside, and act alone on the probabilities of the stories and the inference from the conduct of the parties.—*Wise and another* v. *Sunduloonissa Chowdranee and others.* Vol. 11, p. 177.

Where the evidence of a witness is not received as truthful, neither can books of account kept by such witness be considered as satisfactory evidence of that which when taken by itself is not more credible.—*Tareeny Churn Bonnerjee* v. *Maitland and another.* Vol. 11, p. 317.

The provision in the Code of Procedure, which requires the Judges who admit fresh evidence on an appeal, to record their reasons, though not a condition precedent to the reception of the evidence, is yet one that ought at all times to be strictly complied with. It is a salutary provision which operates as a check against a too easy reception of evidence at a late stage of litigation, and the statement of the reasons may inspire confidence and disarm objection. —*Gunga Gobind Mundul and others* v. *The Collector of the 24-Pergunnahs and others.* Vol. 11, p. 345.

Where the defendant is in possession of lands under an order made by virtue of Act No. 4 of 1840, it lies upon the plaintiff to oust him from that possession by showing a better title to the property claimed.—*Rajah Burducant Roy* v. *Baboo Chunder Coomar Roy and others.* Vol. 12, p. 145.

Presumptions, even *in odium spoliatoris*, have known reasonable limits. They must not be conjectures, nor grounded on *data* which the evidence itself shows to be inexact.—*Shah Mukhun Lall and others* v. *Baboo Sree Kishen Singh and others.* Vol. 12, p. 157.

In a suit instituted by the appellant, as Zemindar of the Raj and Zemindary of *Ramnuggur*, against the respondents, to oust them from two villages situate in and belonging to the said Raj and Zemindary, which they alleged they were in possession of under a *Mocurrery* grant, (*bekh birt*, from generation to generation,) an hereditary estate held at a fixed rent, and purporting to have been made by the appellant, as Zemindar, to one *Mudden Mohun Tewaree*, under whom the respondents claimed. *Held*, that the appellant as Zemindar had a *primâ facie* title to the gross collections from all the villages within the Zemindary, and that it lay upon the respondents to defeat that right by proving the grant of an intermediate tenure. Cause remitted for further trial on additional evidence, with an intimation that if it came to such trial, the duty of the Court which tried it would be to require satisfactory proofs of the genuineness of the *Mocurrery* deed produced, upon which, and not upon the defects in the appellant's case, the right of the respondents to hold the villages under a perpetual and hereditary tenure at a fixed rent must depend. —*Rajah Sahib Perhlad Sein* v. *Doorgapersaud Tewaree and others.* Vol. 12, pp. 286-322.

Suit in which the plaintiff alleged, that by reason of the non-performance of certain religious ceremonies, he the plaintiff had been compelled to perform the same at his own cost, and that in consequence he had a right of action over against the defaulting person for the monies expended in the ceremonies, dismissed for want of proof, although there had been a miscarriage of the Judge in refusing to allow the plaintiff to cross-examine the defendant when called, the Court being of opinion that such cross-examination would not have made out any right of action in favor of the plaintiff.—*Radha Jeebun Moostuffy* v. *Taramonee Dossee.* Vol. 12, p. 381.

The 39th Section of Act 8 of 1859, does not make the admission of any documentary evidence that is not brought in at the time of the filing of the plaint, so improper as to be a ground of appeal against the ultimate determination of the suit by the Court which has admitted it. On the contrary, what that section at the end of it says, is, "Any "document not produced in Court by "the plaintiff when the plaint is pre- "sented, shall not be received in evi- "dence on his behalf at the hearing of "the suit, without the sanction of the "Court."

The Judicial Committee of the Privy Council has not been in the habit of determining appeals upon the mere fact that certain evidence may have been improperly admitted. It has always been a rule of that Committee to do substantial justice between the parties, to take the record as it is sent over, and to see, whether there is sufficient evidence on the whole record to justify the conclusion to which the Courts below have come.—*Goshain Tota Ram* v. *Rajah Rickmunee Bullub.* Vol. 13, p. 77.

When evidence of doubtful admissibility has, under the looser practice of the Indian Courts, been received in a cause, the Judicial Committee of the Privy Council sitting as an Appellate Court, will deal with the case as they think substantial justice requires, and will not allow any merely technical objections to prevail.—*Baboo Bodhnarain Singh and others* v. *Baboo Omrao Singh and others.* Vol. 13, p. 519.

The appeals raised the question upon whom the *onus* of proof lies in suits by a Zemindar or Putneedar for resumption of rent-free tenures. *Held*, that it was upon the plaintiff to prove a *primâ facie* case, his case being, that his *Mâl* land had, since 1790 been converted into *La Khiraj*. That he was bound to give some evidence that his land once was *Mâl*. That he might do so by proving payment of rent at some time since 1790, or by documentary or other proof that the land in question formed part of the *Mâl* assets of the estate at the Decennial Settlement; and that his *primâ facie* case once proved, the burthen of proof is shifted on the defendant, who must make out that his tenure existed before December 1790.—*Hurryhur Mookhopadhya* v. *Madub Chunder Baboo and another* and *Nobokishto Mookerjee* v. *Koylaschundro Buttacharjee and others.* Vol. 14, p. 152.

The ordinary legal and reasonable presumptions of facts must not be lost sight of in the trial of Indian cases, however untrustworthy much of the evidence submitted to these Courts may commonly be; that is, due weight must be given to evidence there as elsewhere, and evidence in a particular case must not be rejected from a general mistrust of native testimony, nor perjury widely imputed without some grave grounds to support the imputation. Such a rejection, if sanctioned, would virtually submit the decision of the rights of others to the suspicions and not to the deliberate judgment of their appointed Judges. Nor must an entire history be thrown aside because the evidence, or some of the evidence, of some of the witnesses is incredible or untrustworthy. —*Ramamani Ammal* v. *Kulanthai Natchear and others.* Vol. 14, p. 346.

With reference to the general question of the admissibility of copies, and the mode in which the Courts in India deal with them, it has been repeatedly ruled, that these questions are not to be dealt with by the strict rules that would prevail at a *Nisi prius* trial in England, where the question is, whether the document ought to be submitted at all to the jury. The way in which evidence is brought in in India almost precludes that rule. On the other hand, when a copy has been in any way received, and it becomes the function of the Judge to consider what weight and value should be given to it, it is the duty of the Judge, in order to test its authenticity, to satisfy himself that there is some reason for producing a copy instead of the original; that there should be some account given of the original, and sufficient reason assigned why the original is not produced, and why the parties rely upon the copy. In all cases the whole of the circumstances should be looked to in order that the Judge may come to a definite conclusion as to the genuineness of the document in question, and the weight and value which he will attach to it.

There is no doubt a considerable difference between cases where documents come in as mere links, or as part only of the evidence of the case, and those in which the suit is actually brought upon the instrument of which a copy is tendered, and the whole cause of action depends on the proof of the original instrument. In the latter case strict proof may properly be required.

A copy of a copy acted upon.—*Ram Gopal Roy and others* v. *Gordon, Stuart and Co. and others.* Vol. 14, p. 453.

Whilst it may not be desirable in all cases to apply strict and technical rules to the admissibility of evidence in the Courts in India, the substantial principles on which the authenticity and value of all evidence rest, should be observed.

One of these principles is, that the best evidence of which the subject is capable ought to be produced, or its absence reasonably accounted for, or explained, before secondary and inferior evidence is received.—*Ramalakshmi Ammal* v. *Sivanantha Perumal Sethurayar.* Vol. 14, p. 570.

See ALLUVIAL LANDS,
ARBITRATION,
BENAMEE,
CUSTOM,
DIGNITIES,
DIVORCE,
ENHANCEMENT OF RENT,
ESCHEAT,
FACTS,
FAMILY ARRANGEMENT,
GUARDIAN AND WARD,
INCUMBRANCER,
JOINT UNDIVIDED HINDOO FAMILY,
LA KHIRAJ LANDS,
LEASE,
LEGITIMACY,
LIMITATION,
MORTGAGE,
NUNCUPATIVE WILL,
PRACTICE,
PUNDITS,
REGISTRATION,
RELIGIOUS TRUST,
SUNNUD,
TRESPASS,
WIDOW,
WILL.

EXCLUSION.

See HINDOO LAW.

EXECUTED POWER.

See WILL.

EXECUTION.

A life interest in the residue of the real and personal property of a testator after all charges had been satisfied and provided for, and after a full administration had taken place of the assets for the purpose of discharging these several dispositions. *Held*, not to be such an interest as could pass under an execution, and that a Bill of Sale thereof by the Sheriff under a writ of *Fieri facias* was null and void, and passed nothing to the purchaser.—*Bebee Tokai Sherob* v. *Beglar and another.* Vol. 6, p. 510.

It would be a cruel wrong and injustice, if, under colour of an execution, a thing described as a "claim remanded "by the Lords of the Privy Council for "the settlement of accounts, and referred to Arbitrators" could be put up to judicial sale: a thing utterly incapable of being estimated or valued, as vague and uncertain and unmeaning a description as if it had been, "all the claims of "*Ramnath* against all his debtors." It is obvious, moreover, what a door of fraud would be opened, if, pending a reference, the Award of the Arbitrators could be put for sale.

A mere expectancy, or a mere right of suit, cannot be attached.

An attachment must operate at the time of attachment, and not be anticipatory, so as to fasten on some future state of property in which the suit may result. Thus if the land of A. be held by A. subject to an option in B. to take it at a definite price or sum, the attachment must be of the land and not of the price.

An existing debt, though payable at a future day, may be attached, whilst a salary, wages, or money claim accruing due, may not.

If a creditor desires to have a security on the receipts of a salary as they accrue, that can be effected only by contract with the debtor, and arrangement with him, and not by attachment by the act of the Court.—*Syud Tufussool Hoosein Khan* v. *Rughoonath Pershad and another.* Vol. 14, p. 40.

The appellants on the 25th March 1862, obtained a judgment against the respondent for the sum of Rupees 9,500 with interest. The respondent appealed against the decree to the High Court of Calcutta, and that Court by a decree of the 8th June 1863, ordered and decreed that the decree of the Lower Court be affirmed, and that the respondent should pay to the appellants Rupees 350 for costs and interest. A petition of appeal to Her Majesty in Council against the decree was then presented by the respondent. On the 8th April 1865, the

respondent presented a petition to the Court suggesting that negociations for a compromise between him and the appellants were pending, and praying that proceedings in regard to the appeal to England might be stayed for two months. On the same day the appellants filed a petition consenting to the application, and prayed that the two months should be granted. The Court on the 4th August 1865, made an order postponing the case for two months, and the two months expired on the 6th October. Nothing came of the negociations, and on the 9th May 1866 the High Court struck the appeal off the file in default of prosecution. On the 22nd April 1867, the appellants made their first application to the Zillah Court for execution against the respondents, and the Zillah Judge rejected the application for execution on the ground that it was barred by Section 20 of Act 14 of 1859, no step having been taken since the 8th of June 1863, to keep the decree in force within the meaning of that section. The appellants appealed against that decision, and the High Court ruled, that in so far as the appellants sought to realize the amount decreed to them by the original decree, their application fell within the three years' limitation of the 20th Section of Act 14 of 1859 and was barred; but, that inasmuch as their claim for Rupees 350, the costs of the application, rested on the decree of the High Court, they were entitled under the 19th Section of the Limitation Act, to sue out execution for that amount at any time within 12 years from the date of the decree, and the case was sent back to the Zillah Court with instructions to deal with it accordingly. The arguments on the appeal to the Judicial Committee of the Privy Council raised the questions; *First*, Is the execution of a decree of the High Court made on appeal from one of the Courts in the Mofussil to be governed by the 20th or by the 19th Section of Act 14 of 1859? or, in other words, is it subject to the three years' or to the 12 years' rule of limitation? *Secondly*, What is the effect of a decree of the High Court affirming a decree of a Zillah Court? Is it to be taken to incorporate the latter in itself, so that, for the purposes of execution, the decree to be executed is to be taken to be a decree of the High Court? and, *Thirdly*, If, on any ground, the decree to be executed in this case was to be deemed subject to the three years' limitation. Had any thing sufficient to keep it in force within the meaning of the 20th Section been done within three years of the date of the application for execution? *Held*, that the preponderance of authority in India was in favor of the proposition, that the execution of decrees of the High Court made on appeal from the District Courts, is subject to the three years' rule of limitation. That this conclusion is correct, and that the sound and convenient rule is, that the Court which has to execute the decree of the High Court should be governed by the rules which govern the execution of its own decrees. That the consideration of the second question was not necessary for the determination of this appeal. That the determination of the appeal must depend upon the third question, *viz.*, whether any proceeding sufficient to keep the decree in force within the meaning of the 20th Section, was had between the 8th of June 1863, and the 22nd of April 1867, the date of the application for execution. That the respondent's petition of appeal, being a proceeding taken in order to destroy the decree, could not of itself be treated as a proceeding to keep it in force, but that appellants had a right to intervene and see that there was a compliance with the rules which regulate the admission and allowance of appeals to England, particularly with such of them as related to security, and in the event of non-compliance to insist on the dismissal of the Petition of Appeal, that they did so intervene, the petition by which they consented to the application for the two months' further time being pregnant evidence of the fact, as unless they had then been active parties to the proceedings their consent would have been unnecessary. That there was at that time such a *contestatio* between the parties, touching the allowance of the appeal to England, as sufficed to bring the case within the principle laid down in the case of *Maharajah Dheeraj Mahtab Chund Bahadoor* v. *Bulram Singh and another*. (Vol. 13, p. 479.) That the appeal ought to be allowed, and That the orders of the Zillah Judge and of the High Court ought to be reversed.—*Kristo Kinkur Roy and another* v. *Rajah Burrodacaunt Roy and another*. Vol. 14, p. 465.

***Mooktakashee** Dabee*, the manager of

the estate of her husband, a lunatic, obtained on behalf of her husband a decree for upwards of two lacs of rupees, upon which she took out execution, and attached and sold at auction certain landed property, of which she became the purchaser. The sale was confirmed and a writ of possession directed, but the Zillah Judge having required *Mooktakashee Dabee* to give security for the proceeds of the sale before he would allow actual possession to be given to her, and, several months having elapsed before she found security, other creditors of the judgment debtor meanwhile obtained attachment and sale of the same lands under a judgment obtained by them against the same debtor, and the lands were sold in execution of their decree, and purchased by themselves, and possession was afterwards given to them. *Held*, that the omission to give security could not in any way affect the title which had vested in *Mooktakashee Dabee* by the first sale, and that her having failed to give security was an utterly untenable ground for giving possession to the purchasers under the second sale, as the security was for the protection of the lunatic, and not a proceeding affecting the judgment debtor, and was entirely collateral to the course of the suit between the judgment creditor and the judgment debtor. That the title had vested in *Mooktakashee Dabee* by the sale under her attachment, and until it was set aside there was nothing upon which the second sale could operate; and that the granting the order for the second sale and the confirming the purchase to the purchaser thereunder when the sale of the same lands had already taken place under *Mooktakashee Dabee's* attachment, and the purchase by her under that sale had been confirmed and had not been set aside, was an error.

Property may be attached without view to immediate sale.

In the case of lands, the process of attachment, and the order for sale, may be distinct, and separate, and there may be a complete execution of a decree under an attachment without any order for sale.

Transmission of certificates may be made to three Zillah Courts concurrently for the purpose of execution, and, if it were not so, the debtor might be able to get rid of his property before it could be attached, but, it may be, in many cases, proper to impose terms on decree-holders, that they should not proceed to sale under all the attachments at once. —*Saroda Prosaud Mullick* v. *Luchmeeput Sing Doogur and others.* Vol. 14, p. 529.

See ESCAPE,
LIEN,
LIMITATION,
MORTGAGE,
PRACTICE,
SALE AFTER ATTACHMENT,
SALE UNDER DECREE,
TORAS GARAS.

EXECUTION SALE.

See LIMITATION.

EXECUTION, STAY OF.

See PRACTICE.

EXECUTOR.

See SALE BY SHERIFF,
WILL.

EXECUTORY BEQUEST.

See GIFT OVER.

EX-KING OF DELHI.

See DELHI, EX-KING OF.

EX-PARTE APPLICATIONS.

See PRACTICE.

EX-PARTE HEARING OF APPEAL.

See PRACTICE.

EXPECTANCY.

See EXECUTION.

EX-POST FACTO LAWS.

See WAGER CONTRACT.

EXTENSION OF TIME FOR APPEAL.

See PRACTICE.

FACTOR.

No satisfactory evidence being adduced to show that any particular usage or custom qualifying the Mercantile Law of England, as between principal and factor, prevailed at Calcutta. *Held*, that factors having an interest, by reason of their advances, in the appellant's goods, were justified in shipping those goods for sale, either, *on account of those concerned*, or, *on account of themselves*, unless their general authority was controlled by instructions from their principal, or by contract.—*Murtunjoy Chuckerbutty* v. *Cochrane*. Vol. 10, p. 229.

FACTOR'S ACT.

See AGENT.

FACTS.

Upon a question of fact, credit must be given to the judgment of the Court below, the Judge having an opportunity of seeing the witnesses and the documents, and being better acquainted with the habits and customs of the people than the Judicial Committee of the Privy Council can be supposed to be. —*Dhurm Das Pandey* v. *Mussumat Shama Soondri Dibiah*. Vol. 3, p. 229.

FAILURE OF HEIRS.

See ESCHEAT.

FALSE IMPRISONMENT.

A Sheriff's officer and his assistant went to the house of the prosecutor for the purpose of arresting him under a writ of *Ca. ad. re.*, and on their arrival, finding the outer door open, entered, but before they could make an actual arrest of the prosecutor they were expelled from the house, the outer door being immediately closed and fastened. The officer, calling in the aid of the Police, had the outer door broken open, and arrested the prosecutor under the writ of *Ca. ad. re.* Upon the officer, and others, being subsequently indicted by the prosecutor for assault and battery, and false imprisonment, *Held*, that although the prosecutor had not been arrested before the officer and those acting in his aid were expelled from the house, they were entitled to break open the outer door for the purpose of re-entering and arresting him; and that, under the circumstances they were entitled to do so without making any express demand for leave to re-enter.

The defendants having once been lawfully in the house, and the prosecutor knowing that they were lawfully about to arrest him, having unlawfully caused them to be expelled for the purpose of preventing them from so doing, could not be allowed to take advantage of his own wrong, by thus defeating the process of the law; and they had a right to place themselves in the position which they occupied when his unlawful act began.

The outer door being open, they were entitled to enter the house under Civil Process, and, being lawfully in the house to arrest the prosecutor, he was guilty of a trespass by expelling them, and his act of then locking the outer door was unlawful, and he could confer no privilege upon himself by that unlawful act. —*Aga Kurboolie Mahomed and others* v. *The Queen*. Vol. 3, p. 164.

FALSE WITNESSES.

See PRACTICE.

FAMILY ARRANGEMENT.

The particularity with which the Courts in India require the strictest proof when a deed in furtherance of a compromise of a suit is sought to be set aside, is a precaution which should never be relaxed, where the spirit of litigation has so little check, and so much wider means of mischief than in England.

Held, that it would be of dangerous consequence to allow such a deed as the one in suit, to be impeached on evidence no stronger than that adduced in the case presented, there being no evidence of haste or precipitancy, no evidence of anything amounting to force or coercion, no evidence of inequality of value, of mistake, of negligence, or of fraud.—*Maharajah Hetnarain Sing* v. *Baboo Modnarain Sing*, Vol. 7, p. 311.

A family compromise upheld, and an act done by one of the parties thereto in plain violation thereof, set aside, notwithstanding the plea raised, that one of the parties thereto had been induced to enter into the same by the fraudulent misrepresentations, concealment, and

suppression of facts by her husband, another of the parties thereto.—*Gregory v. Cochrane and another.* Vol. 8, p. 275.

A deed held to be the expression of a valid family contract between two brothers, acted upon by both of them, and which ought not to be disturbed.

The Court will be slow to fail to give effect to a family arrangement of the kind expressed in such a deed, followed, as it had been, by enjoyment and possession for a period of ten years.—*Mantappa Nadgowda v. Baswuntrao Nadgowda.* Vol. 14, p. 24.

See JOINT UNDIVIDED HINDOO FAMILY.

FAMILY TRUST.

See RELIGIOUS TRUST.

FAMILY USAGE OR CUSTOM.

Held, that a family usage could not exempt a Zemindary from the operation of Bengal Regulation No. XI of 1793, which provides, that after the 1st of July 1794, if any Zemindar shall die without a Will, &c., and leave two or more heirs who by the Mahomedan or Hindoo Law, according as the parties may be of the former or latter persuasion, may be respectively entitled to succeed to a portion, such heirs shall succeed.—*Rajah Deedar Hossein v. Ranee Zuhoor-oon-nissa.* Vol. 2, p. 441.

Decree of the Lower Court upheld, which decided in effect, that, according to the usage of the family, an ancestral estate situate in the Zillah of Cawnpore, in Bengal, was indivisible, and devolved upon the eldest son upon the decease of the father, and not to all the sons as co-heirs, there being evidence of eight descents, in three or four at least of which, there having been more than one son, the property had not been divided between those sons; and one very remarkable case, in which one *Rawut Kurn Rai*, having adopted a son, that son proceeded to deal with the property as an undivided estate, and excluded an after-born natural son of *Rawut Kurn Rai*, and all presumption being in favor of the descent of the property as decreed. —*Rawut Urjun Sing and another v. Rawut Ghunsiam Sing.* Vol. 5, p. 169.

See CUSTOM,
RAJ.

FAMILY WORSHIP.

See RELIGIOUS TRUST.

FATHER.

See ADOPTION,
BANDHOO,
BENAMEE,
MAHOMEDAN LAW.

FATHER-IN-LAW.

See ADOPTION.

FEE SIMPLE.

See TENURE.

FELO DE SE.

See SUICIDE.

FELONY.

See APPEAL.

FINAL DECREE.

See REVIEW OF JUDGMENT.

FORECLOSURE, AND NOTICE THEREOF.

See MORTGAGE.

FOREIGN CAUSE OF ACTION.

See LIMITATION.

FOREIGN CHARITY.

See CHARITABLE BEQUEST.

FORESTALLING.

See WAGER CONTRACT.

FORFEITURE.

See CONFISCATION,
ENHANCEMENT OF RENT,
SUICIDE.

FORGED DOCUMENTS.

See PRACTICE.

FORGERY.

Decree of Court of First Instance dismissing a suit upon an agreement, alleged to be a forgery, on the ground that the Court was satisfied that the document was a forgery, upheld, on the ground that the demand had not been proved; and the decree of the Lower Appellate Court, reversing the decree of the Court of First Instance, reversed.—*Katchy Kullyana Rangappah Kalacka Tola Oodiar* v. *Baloosamy Chetty.* Vol. 7, p. 224.

See EVIDENCE,
REGISTRATION.

FOUJDARRY COURT.

The Foujdarry Court is simply a Police Court, which so far deals with the possession of property, that it prevents the occupation being disturbed by violence.

The title would necessarily or naturally be stated, but the Court says, "I "cannot look at that, the possession is "now the only question, and, therefore "if your title is not clothed with pos- "session, you must go to another Court "to establish that title."—*Kadir Buksh Khan* v. *Mussumatain Fusseeh-oon-nissa and another.* Vol. 5, p. 413. See also *Baboo Kasi Persad Narain* v. *Mussumat Kawalbazi Kooer and others.* Vol. 5, p. 146.

The jurisdiction of this Court is confined to cases of possession, and it is beyond its province to enquire into and ascertain the titles to landed property.—*Maharajah Moheshur Singh* v. *The Bengal Government.* Vol. 7, p. 283.

See EVIDENCE,
TRESPASS.

FRAUD.

Fraud and dishonesty are not to be assumed upon conjecture, however probable.—*Sheikh Imdad Ali and others* v. *Mussumat Kootby Begum.* Vol. 3, p. 1.

In a suit to set aside and cancel a *Zuri-peshgi* deed impeached as obtained fraudulently and without consideration. *Held,* that it lies upon a person who comes into Court to set aside a security solemnly executed by himself, and perfected by possession, to make out his case; and that the evidence herein wholly failed to do so.—*Kalee Pershad Tewarree* v. *Rajah Sahib Perhlad Sein.* Vol. 12, pp. 282-311.

See ACCOUNT STATED,
ADVOCATE,
COMPROMISE,
ESTOPPEL,
EVIDENCE,
GUARDIAN AND WARD,
INSOLVENCY,
LIEN,
LIMITATION,
MORTGAGE,
REGISTRATION,
SALE FOR ARREARS OF REVENUE,
WAGER CONTRACT.

FRAUDULENT CONVEYANCE.

A Court coming to the conclusion that an alleged purchase *pendente lite* was a simulated and fraudulent transaction, for the purpose of defeating a sequestration, and the creditors in a suit then pending, necessarily, naturally, and properly, concluded that the deed, if it were a deed executed under these circumstances, was fraudulent as against creditors.—*Musadee Mahomed Cazum Sherazee* v. *Meerza Ally Mahomed Shoostry and another.* Vol. 6, p. 27.

A deed of assignment executed by one *Obhoychurn Bonnerjee* to secure the re-payment of monies said to be due from him to his grandfather's estate. *Held,* to be a deed executed with intent to defeat and delay creditors.

If the deed was executed with a view to defraud and delay creditors, and if the facts with regard to a large portion of the alleged consideration money are sufficient to show that the deed was executed with that intent, it is impossible for any party to that deed, or any person claiming under those who were parties to that deed, to maintain the deed for any purpose whatever.

The plaintiff not being interested to cancel the deed as a whole, but being interested to remove the deed out of the way of the assertion of his own rights in regard to the property mentioned therein, which he had purchased; ordered, that the decree of the High Court of Calcutta be varied by striking out the words "and it is ordered, that the said "Indenture be retained by the Registrar "for the purpose of being cancelled."

The objection that the plaintiff, being a purchaser at a Sheriff's sale in execution, who had taken a conveyance from the Sheriff of all the interest of *Obhoychurn* in the property in question, as such purchaser, must take that interest as *Obhoychurn* held it and, that as *Obhoychurn* could not set aside the deed which he had executed, therefore, neither could those who claimed by sale from the Sheriff. *Held*, untenable, as before the sale took place there was a determination by the Court in a suit, in which all parties were represented, that the deed was fraudulent and void as against creditors.—*Tareeny Churn Bonnerjee* v. *Maitland and another*. Vol. 11, p. 317.

See LIEN.

FRAUDULENT DECREE.

An adjudication, after a compromise, *Held* to have been obtained not only with great impropriety, but, in effect, by fraud, it being plainly the duty of the party procuring such adjudication after the compromise not to prosecute the appeal, upon the hearing of which he obtained the adjudication referred to.—*Rajmohun Gossain and another* v. *Gourmohun Gossain*. Vol. 8, p. 91.

FRAUDULENT PREFERENCE.

See INSOLVENCY.

FREE AGENT.

See PURDAH WOMEN.

FREEHOLD.

See TENANCY IN COMMON, TENURE.

FUNERAL OBLATIONS.

See BANDHOO, SUCCESSION.

GAMBLING CONTRACT.

See INTEREST, WAGER CONTRACT.

GENERATION TO GENERATION.

See POTTAH.

GENTILES.

See BANDHOO, SAPINDAS.

GHATWALLY TENURE.

The mountain and hill districts in India were at one time inhabited by lawless tribes, asserting a wild independence, often of a different race and different religion from the inhabitants of the plains, who were frequently subjected to marauding expeditions by their more warlike neighbours. To prevent these incursions it was necessary to guard or watch the *Ghats*, or mountain passes, through which these hostile descents were made; and the Mahomedan rulers established a tenure called *Ghatwally* tenure, by which lands were granted to individuals, often of high rank, at a low rent, or without rent, on condition of their performing these duties, and protecting and preserving order in the neighbouring districts.

In a suit wherein the matter to be decided was as to the validity of a claim made by the East India Company to resume for the purposes of revenue assessment, against the *Raja* of *Khuruckpore*, 755 *beghas* of land, part of his Zemindary, the lands sought to be resumed being of *Ghatwally* tenure, and the great question in the case being, whether lands of this description were liable to be resumed under Bengal Regulation No. I of 1793, Section 8, Clause 4, relating to *Tannah* or Police establishments. *Held*, that the *Ghatwally* lands formed part of the Zemindary, and were included in and covered by the settlement and assessment of the estate of *Khuruckpore*. That lands of this description could not properly be considered as lands of which the Zemindars had been permitted by Government to appropriate the produce to the maintenance of *Tannah*, or Police establishments; that if any attempt had been made in 1796, to resume these lands under Bengal Regulation No. I of 1793, such attempts must have failed; and that therefore there could be no ground for the claim set up in this suit by the Bengal Government. That the judgment in favor of the Government on the ground, that these lands were, in reality, lands granted for Police establishments, and were to be considered as provided for in Clause 4, Section 8 of

Regulation No. I of 1793, ought to be reversed, as the lands were not properly within the meaning of the clause relied on, but were part of the Zemindary of *Khuruckpore,* and were included in the settlement for that Zemindary and covered by the *jumma* assessed upon it.

(Case of *Hurlal Sing* v. *Jorawun Sing*, 6, Sudder Dewanny Reports, 170, referred to, in which the Court was of opinion that such lands being held conditionally on the performance of certain defined duties, they were not divisible on the death of the *Ghatwal*, but descended to the eldest son.)—*Rajah Lelanund Sing Bahadoor* v. *The Bengal Government.* Vol. 6, p. 101.

See RESUMPTION OF LANDS, WASILAT.

GIFT.

See DEED OF GIFT.

GIFT INTER VIVOS.

A real transfer of property by a donor, of the Shiah sect, in his lifetime, under the Mahomedan Law, reserving, not the dominion over the *corpus* of the property, nor any share of dominion over the *corpus*, but simply stipulating for and obtaining a right to the recurring produce during his lifetime, is not an incomplete gift by the Mahomedan Law.

A gift upheld, whereby a Mahomedan of the Shiah sect gave to his only son certain Government promissory notes, then standing in the father's name, but upon such gift transferred and endorsed over to the son, and the son having subsequently availed himself of an option given by the Government to the holders of such notes to transfer the same into another public loan, and having obtained new promissory notes in his own name in lieu of the original notes, and having also directed that the interest of the new Government promissory notes should be remitted to his father.

An arrangement between the father and son for the receipt by the father of the interest of the promissory notes during his life, *Held* to be founded on a valid consideration, and the son's undertaking held to be valid and enforceable against him in the Indian Courts as an agreement raising a trust, and constituting a valid obligation to make a return of the proceeds of the notes during the time stipulated. Further, held, that the transfer was complete.

Though the transfer of a legal title will satisfy that provision of the Mahomedan Law which relates to the point of seizin in its legal and technical sense, yet that alone will not suffice where no intention exists to transfer the beneficial ownership either present or future. —*Nawab Umjad Ally Khan* v. *Mussumat Mohumdee Begum and others.* Vol 11, p. 517.

GIFT OVER.

A clause in the Will of a Hindoo, devising his self-acquired real and personal estate among his five sons, was to the following effect: "Should per- "adventure any among my said five "sons die, not leaving any sons from his "loins, nor any son's son, in that event "neither his widow, nor his daughter, nor "his daughter's son, nor any of them, "will get any share out of the share that "he has obtained of the immoveables and "moveables of my said estate. In that "event, of the said property, such of my "sons and my son's sons as shall then be "alive they will receive that wealth ac- "cording to their respective shares. If "any one acts repugnant to this it is "inadmissible. However, if my sonless "son shall leave a widow, in that event "she will only receive Company's Rupees "10,000 for her food and raiment." A controversy having arisen as to whether, according to the true meaning of this clause, the Testator pointed to an indefinite failure of male issue of any one of his sons whose male issue should fail, or failure of male issue at the time of his death; and various other questions as to the construction of the clause having been raised. *Held*, that it was perfectly plain that that to which the Testator pointed was not an indefinite failure of male issue, but a failure of male issue of any of his sons at the time of the death of that son. That this had happened in the case of one son, named *Surroopchunder Mullick*, who died without leaving male issue living at that time, and that, accordingly, an event had happened that the Testator pointed out. That whatever might have formerly been considered the state of the Hindoo Law as to the testamentary power of Hindoos over their property,

that power has now long been recognized, and must be considered as completely established. That there was not anything against public convenience, anything generally mischievous, or anything against the general principles of Hindoo Law in allowing a Testator to give property, whether by way of remainder, or by way of executory bequest, (to borrow terms from the Law of England,) upon an event which is to happen, if at all, immediately on the close of a life in being, and that there would be great general inconvenience and public mischief in denying such a power. That, according to the true meaning of the Will, the property having been given over upon an event which was to take place, if at all, immediately on the close of a life in being at the time when the Will was made, and which event had happened, the Testator in making this provision did not infringe or exceed the powers given him by Hindoo Law, and that the clause effectually gave the *corpus* of the property to the surviving sons immediately on the death of that son who died without leaving male issue. That, according to the true construction of the Will, *Surroopchunder Mullick* became and was entitled to one equal fifth part of the estate moveable and immoveable of the Testator, but that such title was defeasible, nevertheless, upon the event of his death without leaving any son, or son's son, then living, and that *Surroopchunder Mullick* having died without leaving any son or son's son, his interest in the capital of the estate determined upon his death. That *Surroopchunder Mullick* was at the time of his death entitled, and that the appellant as his widow, heiress, and representative was entitled to one equal fifth part of all the accumulations which arose from the estate of the Testator from the time of his death to the time of the death of *Surroopchunder Mullick*; the part to which the appellant was so entitled, to be held, possessed, and enjoyed by her as a Hindoo widow, in the manner prescribed by Hindoo Law. That the appellant was entitled absolutely in her own right to all such interest and accumulations as, since the death of *Surroopchunder Mullick*, had arisen from the one-fifth part of the accumulations to which she the appellant was declared to have been entitled; and That there seemed no ground on which the appellant could claim the Court's interference on the question of maintenance, or which called upon it to interfere with any application on the subject to the Lower Court on taking the accounts, if the decree left the point open.—*Sreemutty Soorjeemoney Dossee* v. *Denobundoo Mullick and others*. Vol. 9, p. 123.

See WILL.

GOOD AND SUFFICIENT CAUSE.

See LIMITATION.

GOOD FAITH.

See AGENT,
HUSBAND AND WIFE,
LIMITATION,
MANAGER,
OFFICIALS,
REGISTRATION,
UNDERTAKING.

GOODS SOLD AND DELIVERED.

See BILL OF EXCHANGE.

GOTRAVA.

See BANDHOO.

GOVERNMENT.

See ESCHEAT,
GOVERNMENT OFFICER,
LIMITATION,
TORT.

GOVERNMENT OFFICER.

The acts of a Government officer bind the Government only when he is acting in the discharge of a certain duty within the limits of his authority, or, if he exceed that authority, when the Government in fact, or in law, directly, or by implication, ratifies the excess.—*The Collector of Musulipatam* v. *Cavaly Vencata Narainapah*. Vol. 8, p. 529.

See TORT.

GRAM SURUNJAMEE CHAKERAN LANDS.

See CHAKERAN LANDS.

GRANT.

See AMARAM TENURE,
ENAM,
HEREDITARY OFFICES,
MAHOMEDAN LAW,
RAJ,
RESUMPTION OF LANDS.

GREAT-GREAT-GREAT-GRANDSON.

See SAPINDAS.

GUARDIAN AND WARD.

From the very necessity of the case, a child in India, under ordinary circumstances, must be presumed to have his father's religion, and his corresponding civil and social status; and it is, therefore, ordinarily, and in the absence of controlling circumstances, the duty of a guardian to train his infant ward in such religion.

The ward was the child of a Christian father, the issue of a Christian marriage. She was left an infant of very tender years under the protection of her mother. The mother was a lady, apparently, of ancestry not Christian, and with no great knowledge of Christian tenets, or attachment to Christian habits, but was married to a Christian in a Christian Church, and did not appear to have professed any other faith, or to have reverted in costume or customs to her ancestral faith until the autumn of 1867. The child up to that time was brought up, and, so far as she was educated at all, educated as a Christian girl, eating, drinking, and associating with her Christian cousins, and going to a school. In the autumn of 1867, the house of the widow became the house of one *John Thomas John*, and they lived and cohabited together as husband and wife. *John Thomas John* being already the husband in Christian marriage of a living Christian wife. It was suggested that the union of the widow and *John Thomas John* was sanctified by the widow becoming a Mahomedan, and by *John Thomas John* also becoming a Mahomedan, and, having thus qualified himself for the enjoyment of polygamous privileges, he contracted in Mahomedan form a valid Mahomedan marriage with the widow. The Court considered, that when the connection between *John Thomas John* and the widow was formed, the home was no longer a fit home for a Christian young girl; and that if the matter had then been brought to the notice of the Judge, it would have been his plain duty, without delay, to find a more suitable home and guardianship, than what had become, in fact, the home and guardianship of *John Thomas John*. Some relatives, however, having interfered, in order that the child might be sent to a proper school—a proper Christian school—*John Thomas John* and his alleged wife professed to yield to the suggestion, and took the girl to Simla with the avowed object of placing her in a Christian school there, which project they represented to have failed, by reason of the girl's refusal to go to school, and expression of a preference for the Mahomedan religion and the oriental mode of feminine life in seclusion behind the purdah; and, at some time a Moulavie was introduced, who confirmed her in her resolution to become a Mahomedan. The young lady, then of the age of 14 years, or thereabout, made a deposition supporting the statements of her mother and *John Thomas John*, and stating her wish to remain a Mussulmani. Order of the High Court of the North-Western Provinces, removing the ward from her mother and alleged stepfather, and placing her under a Christian guardian, confirmed.—*Skinner* v. *Orde and others*. Vol. 14, p. 309.

It is undoubtedly the duty of guardians scrupulously to regard the interest of minors in dealing with their estates, and the Court will, when necessary, enforce the performance of this duty. But the interests of infants would seriously suffer if a notion were to prevail, that guardians were bound for their own security to contest all claims against an infant's estate, whether well or ill-founded; and such a notion might prevail if the compromise of a claim of debt confirmed by a decree of a Court were set aside after sixteen years without distinct proof of fraud.

The burthen of proving that a suit was fictitious, and a compromise fraudulent and collusive. *Held*, to be upon the plaintiff who asserted same, as against his guardian; and, that an element in that proof, without which his case amounted to nothing, was, the non-

existence of a debt, and that it rested, therefore, with him to give, at all events, some *primâ facie* evidence of this before the burthen of proof was shifted to the defendant.—*Baboo Lekraj Roy* v. *Baboo Mahtab Chand and others.* Vol. 14, p. 393.

See DISQUALIFIED LANDHOLDER,
LOCUS STANDI,
MINOR.

HALF-BLOOD.

See BROTHER.

HEIR.

See CONSTRUCTION,
DOWER,
ESCHEAT,
EVIDENCE,
FAMILY USAGE OR CUSTOM,
ILLEGITIMACY,
LEASE,
LIMITATION,
MAHOMEDAN LAW,
MANAGER,
NATIVE CHRISTIANS,
POLLIAM TENURE,
PRESUMPTIVE HEIR,
SALE FOR ARREARS OF RENT,
SELF-ACQUIRED PROPERTY,
SISTER,
SISTER'S SON,
SOVEREIGN POWER,
SUCCESSION,
TENANCY IN COMMON,
TENURE,
WIDOW,
WILL,
ZEMINDAR.

HEREDITARY INTEREST.

See GHATWALLY TENURE,
POTTAH.

HEREDITARY OFFICERS.

See LIMITATION.

HEREDITARY OFFICES.

The grant of a village in *Enam* by the Government does not necessarily deprive officers of their hereditary rights.

In a suit for recovery of their dues by certain *Mujmoodars, Held,* that it was not essential to their case that the duties should have been actually performed, if they were prepared to discharge them when required.—*Beema Shunker and others* v. *Jamasjee Shaporjee and others.* Vol. 2, p. 23.

Claim to the hereditary office of the headship of the butchers in the town of *Ahmednuggur* dismissed, the appellant having failed to make out even a *primâ facie* case; and the length of time during which the respondent and his father had exercised the office (nearly 30 years), held to very much strengthen the presumption against the case of the appellant.—*Babun Wullad Raja Katik* v. *Davood Wullad Munnoo.* Vol. 2, p. 479.

HIGH COURTS.

See EVIDENCE,
EXECUTION,
JURISDICTION,
PRACTICE.

HINDOO.

See ESCHEAT,
ILLEGITIMACY,
NATIVE CHRISTIANS,
SUICIDE.

HINDOO FEMALE.

See ACQUIESCENCE,
ESCHEAT,
WIDOW.

HINDOO LAW.

Decree of the Lower Appellate Court confirmed, the same being based upon an opinion of the Hindoo Law Officers, to the effect, that if ancestral landed estates and other property of a person who is destitute of male heirs, be sufficient for the suitable maintenance of his wife and family, he is competent, without the consent of his wife, to alienate in perpetuity to one of his nearest male relations, a village which he had acquired by purchase at a public

auction.—*Mulraz Lachmia* v. *Chalekany Vencata Rama Jagganadha Row.* Vol. 2, p. 54.

The Mithila Law is against the claim of any relation on the mother's side till those on the father's side to the seventh degree have been exhausted.

Claim under the Mithila Law to a Zemindary by the relation in the sixth degree on the father's side preferred to that of the appellant, who claimed to be entitled as the first cousin on the mother's side.

Where a family migrates from one territory to another, if they preserve their ancient religious ceremonies, they also preserve the law of succession.—*Rutcheputty Dutt Iha and others* v. *Rajunder Narain Rae and another.* Vol. 2, p. 132.

A Zemindary in the district of Benares having descended to one *Rajah Juswunt Sing*, and the *Rajah* having died without issue, leaving his wife his heiress. *Held*, that she, by the execution of a *Wusseeyut-namah*, or deed of gift, could not transfer the Zemindary to a stranger; and that if the woman gave the property to a near relative who might possess strong claims upon the property, still the transfer would be illegal without the consent of the heirs.—*Keerut Sing* v. *Koolahul Sing and others.* Vol. 2, p. 331.

The Hindoo law contains in itself the principles of its own exposition.

The Digest subordinates in more than one place the language of texts to custom and approved usage.

Nothing from any foreign source should be introduced into it, nor should Courts interpret the text by the application to the language of strained analogies.

The question of preference is distinct from that of entire exclusion.

When a question of preference arises, as preference is founded on superior efficacy of oblations, that principle must be applied to the solution of the difficulty.

Where all the contending kindred are in an equal degree remote, and when the benefits conferred are equal, though slight, the principle of selection founded on superior efficacy, is inapplicable to the solution of the question of precedence.—*Bhyah Ram Singh and another* v. *Bhyah Ugur Singh and another.* Vol. 13, p. 373.

See ADOPTION,
ANCESTRAL PROPERTY,
BANDHOO,
BROTHER,
CHILDREN,
CUSTOM,
DIVISION,
ESCHEAT,
GIFT OVER,
ILLEGITIMACY,
INCUMBRANCER,
JOINT UNDIVIDED HINDOO FAMILY,
KHATRI CASTE,
LEASE,
LIFE INTEREST,
LUNATIC,
MAINTENANCE,
MANAGER,
MARRIAGE,
MORTGAGE,
NATIVE CHRISTIANS,
PARTITION,
POLLIAM TENURE,
POSSESSION,
RAJ,
SAPINDAS,
SELF-ACQUIRED PROPERTY,
SISTER,
SISTER'S SON,
SOVEREIGN POWER,
SUCCESSION,
SUICIDE,
TENANCY IN COMMON,
WAGER CONTRACT,
WIDOW,
WILL,
ZEMINDAR.

HINDOO SOVEREIGN.

See SOVEREIGN POWER.

HUSBAND.

See DIVORCE,
DOWER,

HUSBAND AND WIFE,
MAHOMEDAN LAW,
MARRIAGE,
RESTITUTION OF CONJUGAL RIGHTS,
WIDOW.

HUSBAND AND WIFE.

In a suit by a Mahomedan wife against her husband for the recovery of certain landed and other property, and, amongst other things, of the value of certain Government securities, her own property, alleged to have been entrusted by the wife to the husband for a particular purpose, *viz.*, that of receiving the interest on them for the wife, the wife further alleging that, though the securities might have been endorsed by her, she never meant to transfer the property in them; and in which suit the husband pleaded, that he had purchased the securities from his wife on several occasions, and that on their endorsement and delivery he paid her the full value of them. *Held*, that the principle of the judgments of the Courts below, that although the wife might have failed to establish affirmatively the precise case alleged by her, her husband having admitted the receipt of the securities from her, was bound to show something more than mere endorsement and delivery, and, that, the relation of the parties being what it was, it was upon him to prove that the transactions he set up were *bonâ fide* sales and purchases, and that he actually gave full value for what he received from her, was a sound principle, and in accordance with the long established practice of the Courts of India. That the Mussulmani woman of rank in India, being, like the Hindoo, shut up in a Zenana, and having no communication, except from behind the purdah, with any male persons, save a few privileged relatives or dependants, the wife was entitled to the protection the law gives to a *Purdah Nusheen*, and, that the burthen of proving the reality and *bonâ fides* of the purchase pleaded by the husband was properly thrown on him.—*Moonshee Busloor Ruheem and another* v. *Shumsoonnissa Begum.* Vol. 11, p. 551.

See DIVORCE,
DOWER,
MAHOMEDAN LAW,
MARRIAGE,
RESTITUTION OF CONJUGAL RIGHTS,
WIDOW.

HYPOTHECATION.

See DOWER,
PRINCIPAL AND SURETY.

ILLEGITIMACY.

An Englishman, living in India, had two illegitimate children by a native woman, a Hindoo of one of the privileged classes, who had deserted her husband, and also three other illegitimate children by another native woman. By his Will he devised an estate to his five illegitimate children, in equal shares; to each a fifth share. The children were brought up as Hindoos, and lived at first as an united family, but some time after the father's death one of the sons, named *Ramaprasad*, instituted a suit for partition, and obtained a decree accordingly, against which an appeal was presented; but before it came on for hearing, the parties came to an arrangement and entered into a Razeenamah or Deed of compromise. *Held*, that all the illegitimate sons were to be considered as Hindoos. That the sons were not an united Hindoo family in the ordinary sense in which that term is used by the text writers of the Hindoo Law, *viz.*, a family of which the father was, in his lifetime, the head, and the sons in a sense parceners in birth, by an inchoate though alterable title; but were sons of a Christian father by different Hindoo mothers, constituting themselves parceners in the enjoyment of their property after the manner of a Hindoo joint family. That on the death of each, his lineal heirs, representing their parent, would by the effect of the agreement enter into that partnership; collaterals, however, not so entering by succession, unless the Hindoo Law gave in such a case a right of inheritance also to collaterals. That the parties could not by their agreement give new rights of succession to themselves, or their heirs, unknown to the law; and that the law of survivorship, which is the consequence of such a partnership amongst Hindoos, would come in only on failure of the heirs.—*Myna Boyee and others* v. *Ootaram and others.* Vol. 8, p. 400.

See BROTHER,
CHILDREN,
EVIDENCE,
JUDGMENT IN REM,
KHATRI CASTE,
LEGITIMACY,
MAINTENANCE,
MARRIAGE.

IMAM.

See MAHOMEDAN LAW.

IMMOVEABLE PROPERTY.

See PALKI HUQ,
WIDOW,
WILL.

IMPARTIBILITY.

The mere impartibility of an estate is not sufficient to make the succession to it follow the course of succession of separate estate.—*Stree Rajah Vanumula Venkayamah* v. *Stree Rajah Vanumula Boochia Vankodora.* Vol. 13, p. 333.

See EVIDENCE,
FAMILY USAGE OR CUSTOM,
GHATWALLY TENURE,
RAJ,
SOVEREIGN POWER,
ZEMINDAR.

IMPLIED TRUST.

See RESULTING TRUST.

IMPROVIDENT GRANT.

See ENHANCEMENT.

INCOMPLETE CONTRACT.

See AGENT.

INCUMBRANCER.

Under the Hindoo Law, the right of a *bonâ fide* incumbrancer who has taken from a *de facto* Manager a charge on lands created honestly, for the purpose of saving the estate, or for the benefit of the estate, is not, provided the circumstances would support the charge had it emanated from a *de facto* and *de jure* Manager, affected by the want of union of the *de facto* with the *de jure* title.

It is to be observed that a lender of money may reasonably be expected to prove the circumstances connected with his own particular loan, but cannot reasonably be expected to know or to come prepared with proof of the antecedent economy and good conduct of the owner of an ancestral estate.—*Hunooman Persaud Panday* v. *Mussumat Babooe Munraj Koonweree.* Vol. 6, p. 393.

See CONFISCATION,
MANAGER,
MORTGAGE,
SALE FOR ARREARS OF RENT,
SALE UNDER DECREE,
WIDOW.

INCUMBRANCER, SUBSEQUENT.

See MORTGAGE.

INDEPENDENT STATES.

See SOVEREIGN POWER.

INDIA, TRANSFER OF, TO CROWN.

See CROWN.

INFANT.

See ACQUIESCENCE,
BENAMEE,
EVIDENCE,
GUARDIAN AND WARD,
LOCUS STANDI,
MANAGER,
MINOR,
PRACTICE.

IN FORMÂ PAUPERIS.

See PRACTICE.

INGROSSING.

See WAGER CONTRACT.

INHERITANCE.

See ADOPTION,
BANDHOO.
ESCHEAT,
ILLEGITIMACY,
KHATRI CASTE,
MAHOMEDAN LAW,
MARRIAGE,
NATIVE CHRISTIANS,
POLLIAM TENURE,
POTTAH,
PRIMOGENITURE,
RAJ,
SAPINDAS,
SELF-ACQUIRED PROPERTY,
SISTER,
SOVEREIGN POWER,
SUCCESSION,
TENANCY IN COMMON,
WIDOW,
ZEMINDAR.

INHERITANCE, WORDS OF.

See ENHANCEMENT OF RENT,
POTTAH,
SUNNUD,
TENANCY IN COMMON.

INJUNCTION.

See PRINCIPAL AND SURETY.

INJURY.

See TORT.

INNOCENT PURCHASER.

See PURCHASER,
SALE FOR ARREARS OF REVENUE.

INQUIRY.

See LOCAL INQUIRY.

INSANITY.

See LIMITATION,
LUNATIC.

INSOLVENCY.

Although Assignees of a bankrupt represent the bankrupt for some purposes, they are not bound by his liabilities. The only burthen which the law imposes on them is, to collect the bankrupt's property, and distribute it amongst the creditors.

The term *mutual credit* in Section 36 of Act 9, Geo. 4, Cap. 73, being "An "Act to provide for the relief of Insol- "vent Debtors in the East Indies," extends the right of *set off* to cases where the party receiving the credit is not debtor *in presenti* to him who gives the credit; accordingly the relation contemplated by the Statute has been held to be established where the debt is immediately due from the one party, and only due at a future day from the other.

But for a special custom giving the pawnee a general lien, the mere deposit, whether of goods or of securities, for a particular purpose, as it certainly will not constitute the pawnee a debtor, so it will not amount to a giving of credit at all, unless coupled with an authority given to the pawnee of selling them; such power being given absolutely, and not countermandable.—*Young* v. *Bank of Bengal.* Vol. 1, p. 87.

The principle that one creditor shall not take a part of the fund which otherwise would have been available for the payment of all the creditors, and at the same time be allowed to come in *pari passu* with the other creditors, for satisfaction out of the remainder of that fund: does not apply where that creditor obtains by his diligence something which did not, and could not, form a part of that fund.

If real estate exist which did not pass to, and could not in any way be got hold of, and made available by the Assignees for the payment of the general body of creditors, any individual creditor who could obtain it by due course of law, would have a right to hold it, and, if he duly proved the debt due to him, before he had been paid any part of the debt so proved by means of that estate, he would be entitled to receive the dividends under the Insolvent estate until he had been paid altogether twenty shillings in the pound, exactly in the same way as if the creditor had had a security on the real estate, or personal credit of a third person. In this case he could

neither be compelled to refund the money obtained by means of the real estate, nor the dividends received on the debt, nor be restrained from receiving those thereafter to become due.

Real estate in Java, the property of an Insolvent debtor, *Held*, not to pass under the general assignment to the Assignees of an Insolvent in Bengal, so as to be a part, or capable of being made part, of the general fund distributable under the Bengal Insolvent Act.—*Cockerell and others* v. *Dickens*. Vol. 2, p. 353.

After a case was set down for hearing, intelligence was received, just before the time appointed for hearing, that the appellant had been declared an Insolvent under the provisions of the Indian Insolvent Act, and that his estate and effects had become vested in the Official Assignee of the Insolvent Court at Calcutta, which facts were verified by an affidavit of the respondent's agents, and no communication had been received from the Official Assignee at the Council Office. The Judicial Committee of the Privy Council, holding it to be impossible to make an order binding on the Official Assignee, and that they, therefore, could not then enter into the merits of the appeal, directed the appeal to stand over for a limited time, the respondents to serve the Official Assignee with notice that unless the appeal were effectually revived within a time fixed, it would be dismissed with costs, liberty being given to the Official Assignee to take such steps as he might be advised. The Official Assignee having been accordingly served with notice, and having taken no steps within the time limited to revive and prosecute the appeal; Upon an application made on behalf of the appellant for an extension of the time for reviving the appeal, on the ground, that there was a prospect of his arranging with his creditors, so as to supersede the adjudication of Insolvency, the Court refused such application, and ordered the appeal to be dismissed.—*Gooroochurn Sein* v. *Radanauth Sein and others*. Vol. 7, p. 1.

Under the Statute 11 and 12, Vic. Cap. 21, the Assignee has a right to the subsequently acquired property of an Insolvent, unless the Insolvent has obtained a certificate and discharge.

But the Assignee's right to the subsequently acquired property is subject to two qualifications. In the first place, if the Insolvent has acquired property subject to liens and obligations, then any property taken by the Assignee under that state of things is taken subject to those charges and equities which affect the property in the hands of the Insolvent. The second qualification is, that if the Insolvent carries on trade at a subsequent period with the assent of the Assignee of the estate under the Insolvent Act, in the first instance the property which is acquired in the subsequent trade will be subject in equity to the charge of the creditors in that trade, in priority to the claim of the Assignee under the first Insolvency.

The Insolvent carried on for a certain time the business of an Hotel, as Agent or Manager for other persons. He subsequently made an arrangement with the appellant, by which he became the purchaser of the property in dispute, and carried on the trade subsequently on his own account, with the knowledge of the Assignee under the Insolvency. A sum of money was advanced by the appellant for the purpose of being laid out in the purchase of the property; and at the time it was advanced, it was advanced subject to an agreement, that it was to be laid out in that particular manner, and that the property was to be assigned to the person who advanced the money in order to secure the re-payment; and a mortgage was executed accordingly. *Held*, that it was one transaction by which the Insolvent never acquired anything except subject to the lien of the creditor, and that the Assignee could stand in no better situation.—*Kerakoose* v. *Brooks*. Vol. 8, p. 339.

There is nothing fraudulent or improper in an Insolvent firm parting with or putting an end to a current speculation, the result of which is still uncertain, on the best terms they are able; on the contrary, such a course is an honest one to follow.

The rescision and abandonment of a speculation, whilst the result is still uncertain, is a totally different thing from preferring one creditor to others after a debt has been incurred.

If an honest man discovers he cannot pay a bet if he loses, and is ready to rescind the bet before the event happens, he is not bound to take the chance of winning for the benefit of his creditors.—*Miller* v. *Barlow*. Vol. 14, p. 209.

See SET OFF.

INSOLVENCY OF APPELLANT.

See INSOLVENCY.

INSTALMENTS.

See SALE FOR ARREARS OF REVENUE, TENDER.

INSUFFICIENTLY STAMPED DOCUMENT.

See STAMPS.

INTENTION.

See WILL.

INTEREST.

The Sudder Dewanny Adawlut of Bombay having awarded interest upon the amount of a Zillah Court's decree, from the date of the original decree, to that of the execution of the Privy Council's decree upon appeal, although the decree was silent on the point, the Judicial Committee of the Privy Council on appeal confirmed such allowance.—*Kirkland* v. *Modee Pestonjee Khoorsedjee.* Vol. 3, p. 220.

Interest allowed upon an instrument, dated March 20th, 1833, which, without being strictly in the nature of a Bond, was an instrument recognizing the existence of a debt payable with interest, and providing for its liquidation by certain instalments, but not itself expressly providing interest; although it was objected, that the law alleged to be in force at the date of the Bond, Madras Regulation No. XXXIV of 1802, Section 5, must govern the right to interest, and not Act No. 32 of 1839, which it was urged had no retrospective operation.

Held, that the Sudder Dewanny Adawlut rightly treated an account sent in to a Collector, who had sequestrated the estate of the defendant, in which the Bond sued on was expressly admitted, and which account contained payments which, if made, would take the case out of Madras Regulation No. II of 1802, Section 18, Clause 4, as a document clearly showing a distinct acknowledgment on the part of the defendant of the existence of the Bond, and also of the payments upon which the plaintiff relied to take the case out of the Regulation of Limitation.—*Rajah Bommarauze Bahadur* v. *Rangasamy Mudaly.* Vol. 6, p. 232.

Bengal Regulation No. XV of 1793, hindering persons from recovering arrears of interest of more than one hundred per cent. applies only to arrears which have not been any part of them paid.—*Bamundoss Mookerjea* v. *Omeish Chunder Raee and others.* Vol. 6, p. 289.

Act 32 of 1839 was framed, as appears on the face of it, expressly in order to extend to India the provisions of the Statute 3 and 4, Will. 4, Cap. 42, Section 28, and substantially adopts the language of it.

With regard to the construction of the terms *a sum certain, and a time certain*, the certainity required must exist at the time when the promise is made; and the Act does not in this part affect debts contingent in amount and time of becoming due.

Interest refused under the Act upon *Tajee Mundee Chittees*, the name given to the gambling contracts upon the average price at which opium would sell at the Government opium sales.—*Juggomohun Ghose* v. *Manickchund and another.* Vol. 7, p. 263.

Upon an appeal as to the right of the plaintiff, the appellant, to recover interest as well as the principal upon certain contracts known in India as *Tajee Mundee Chittees. Held*, that the Court below was quite right in holding that the evidence did not sufficiently establish the usage, upon which alone the right to interest must depend.—*Juggomohun Ghose* v. *Kaisreechund.* Vol. 9, p. 256.

The Sudder Court of Calcutta, in the exercise of the discretion given it by Act No. 32 of 1839, having given interest from the date of the commencement of a suit, at the rate of twelve per centum per annum; and there being evidence that former accounts current, between the same parties, and relating to similar transactions, contained entries of interest at the rate of ten per centum per annum only, on account of which the Sudder Court had reduced the interest allowed by the Zillah Judge from before the commencement of the suit. *Held*, that the same consideration should

have determined the rate of interest to be allowed from the date of suit, and that the amount of this should also be calculated at ten per centum per annum. —*Murtonjoy Chuckerbutty* v. *Cochrane.* Vol. 10, p. 229.

The rate of interest should be fixed according to some principle, not according to the arbitrary discretion of the Judges.—*Lalla Bunseedhur* v. *Koonwur Bindeseree Dutt Singh.* Vol. 10, p. 454.

Plaintiff charged interest, at the rate of twelve per centum per annum, upon the principal sum for which he was accountable in lieu of certain profits for which he had failed to account.—*Ram Pershad Tewarry* v. *Sheochurn Doss and others.* Vol. 10, p. 490.

The Judicial Committee of the Privy Council could see no principle of law, equity, or sound policy, upon which the period when the rebellion took place should be excluded from the time for which interest, due upon a bond, was to be computed.—*Shah Koondun Lall and another* v. *Rajah Ameer Hussun Khan and others.* Vol. 11, p. 120.

Frederick George Lister, on the 18th May 1850, advanced to his son-in-law, *Henry Inglis*, the sum of Rupees 41,900 and *Inglis* gave his promissory note for the amount, promising to pay the same with five per cent. interest at the expiration of three years. On the 31st December 1850, *Lister* made a further advance to *Inglis* of the sum of Rupees 19,500, upon the same terms and conditions. *Inglis* died in 1860, having during his lifetime paid interest upon the loans at the rate of eight per cent., and, on examining his papers, it was found that he had also debited himself with interest thereon at eight per cent. In an action by *Lister* against the executrix of the deceased *Inglis*, for recovery of the balance due upon the promissory notes, calculating the interest at eight per cent. and in which action the executrix pleaded, that, though *Inglis* had voluntarily debited himself with interest at eight per cent. in *Lister's* favor, yet his estate was not liable under the promissory notes to pay more than five per cent., and that he had never entered into any contract to pay a larger rate of interest. *Held*, that it appeared from the evidence, that so far as the legal right was concerned there was but one contract existing for valuable consideration, and capable of being enforced, *viz.*, the contract made at the time of the loan in conformity with the written obligation for the loan contained in the promissory notes. That all departures from that in respect of interest were departures which had been made from mere good will and sense of duty on the part of the son-in-law *Inglis*, who was the debtor, but not as being the result of any legal contract or obligation between him and his father-in-law *Lister*; and, therefore, that interest was only due at the rate of five per cent., as contracted for by the promissory notes.—*Guthrie et uxor* v. *Lister.* Vol. 11, p. 129.

Neither the rule nor the reason for the rule, that, when a creditor sues for his principal and interest, (the latter being equal or more than equal at the time of the commencement of the suit to the amount of the principal,) he is not debarred from charging subsequent interest for the period during which he is kept out of his money by his debtor's resistance of the demand, seem to apply to a case in which a mortgagee in possession is, not a party suing for the money, but the party resisting by every means in his power a claim for redemption, and the final settlement of the account.—*Nawab Asimut Ali Khan* v. *Jowahir Sing and others.* Vol. 13, p. 404.

In a suit against the Official Assignee of the Court for the relief of Insolvent debtors at Calcutta. *Held*, that, under the circumstances a Court of Equity would clearly be disposed to give interest; and that as the High Court had the powers both of a Court of Equity and a Court of Law, interest had been properly allowed.—*Miller* v. *Barlow.* Vol. 14, p. 209.

See APPEALABLE VALUE,
APPROPRIATION,
GIFT INTER VIVOS,
GIFT OVER,
MORTGAGE,
PRACTICE.
PROFITS,
USURY,
WAGER CONTRACT.

INTERLOCUTORY ORDER OR DECREE.

The Judicial Committee of the Privy

Council were not aware of any law or regulation prevailing in India which rendered it imperative upon the suitor to appeal from every interlocutory order by which he might conceive himself aggrieved, under the penalty, if he did not do so, of forfeiting for ever the benefit of the consideration of the Appellate Court.—*Maharajah Moheshur Sing* v. *The Bengal Government.* Vol. 7, p. 283.

An interlocutory order, not purporting to dispose of the cause, not having been appealed against, *Held*, not to preclude the appellant from raising matters connected therewith upon appeal from the final decree.—*Forbes* v. *Ameeroonissa Begum.* Vol. 10, p. 347; *Sheonath* v. *Ramnath.* Vol. 10, p. 413.

See MORTGAGE.

INTERNATIONAL LAW.

See SUICIDE.

INTESTACY.

See ESCHEAT.

IRREGULARITY.

See EVIDENCE,
ISSUES,
MASTER IN EQUITY,
PRACTICE,
SALE FOR ARREARS OF REVENUE,
SALE UNDER DECREE.

ISSUES.

The decree of the Sudder Adawlut not having passed upon the merits, or on any point raised in the Court below; but, it having been objected that the suit disclosed a case of Champerty, the Court resolved to entertain the objection, and decided the case against the appellant on that point only. *Held*, that, the decree of the Sudder Adawlut in this respect could not be supported. That though it might be admitted that the Court would have the right, perhaps even lay under an obligation, to take cognizance, *motu proprio*, of any objection, manifestly apparent on the face of the proceeding, which showed that it was against morality or public policy; yet, where, as here, that was only to be collected from the evidence by inference, and was capable of explanation or answer by counter-evidence, it was highly inconvenient, as well as contrary to Madras Regulation No. XV of 1816, and might lead to the most direct injustice, to enter into the enquiry, if the issue has not been presented by the pleadings, or the points recorded for proof.—*Fischer* v. *Kamala Naicker.* Vol. 8, p. 170.

The Sudder Court having upon a preliminary objection, taken before them upon an appeal, to the effect, that the Court below had not drawn up and recorded any issues, held such objection to be fatal, and ordered that the decree appealed from should be set aside, and the case remanded to the Lower Court, with directions to lay down issues, call upon the parties for proofs, and then to try the case *de novo*; and the plaintiff upon the re-trial, after the issues had been laid down, took no advantage of the opportunity thus afforded him of giving fresh evidence; but, by petition, prayed for judgment on the evidence, oral and documentary, already given. *Held*, that, if this manner of trial were irregular it was not for the plaintiff to complain of an irregularity committed at his instance, or with his consent.—*Maharajah Koowur Baboo Nitrasur Singh* v. *Baboo Nund Loll Singh and others.* Vol. 8, p. 199.

It would be most mischievous to permit parties who have had their case, upon one view of it fairly tried, to seek to have the appeal determined upon grounds which have never been considered, or taken, or tried in the Court below.—*Sreemutty Dossee and others* v. *Ranee Lalunmonee and others.* Vol. 12, p. 470.

An objection having been taken that no issues were directed in the manner prescribed by the practice of the Courts in India. *Held*, that the decree of the High Court of Madras, made on Special Appeal, having directed that the matter should be referred to ascertain the amount of maintenance which might appear to be justly and properly payable with reference to the means of the defendant, and the other facts of the case, and to proceed to the decision in the manner indicated in Section 351 of the Code of Civil Procedure, removed any such objection, and that such an enquiry was equivalent to issues, and rendered any further issues entirely unnecessary.—*Katchekaleyana Rungap-*

pa Kalakka Tola Oodiar v. *Kachivijaya Rungappa Kalakka Tola Oodiar*. Vol. 12, p. 495.

The Judicial Committee of the Privy Council, whilst desirous of avoiding saying anything which might have the effect of introducing any laxity in the Courts of India in regard to the observance of those provisions of the Civil Procedure Code which direct the settlement of issues, provisions which they regard as most important, do not find in the Code anything which says positively that the omission to settle those issues is fatal to the trial.

The omission to raise issues having been brought to the notice of the Appellate Court, which expressed its regret that the Principal Sudder Ameen had omitted to settle issues, and such Appellate Court having conceived that it was not under any positive obligation to remand the case, and seeing that the parties had gone to trial knowing what the real question between them was, and that the evidence had been taken, and being of opinion that the conclusion had been correctly drawn from the evidence, had thought it within their competence to affirm the decision of the Court of First Instance without sending the case back for a re-trial. The Judicial Committee of the Privy Council were not prepared to say that the Appellate Court had not power to do so under the 354th Section of the Civil Procedure Code; and, therefore, fully concurring in the observations made by the Appellate Court that it was the duty of the Judge to settle the issues, and that it was much to be regretted that he had omitted to settle those issues, still thought that, under all the circumstances of the case, substantial justice having been done, there had not been that fatal mis-trial of the cause which vitiates all proceedings and renders a new trial necessary.

In coming to this conclusion, regard was had to the circumstance that no objection was taken in the Court below to dealing with the case without the settlement of issues. Had the objection been taken the appellant would have stood on higher grounds, and it would then have been very difficult to say that a trial proceeding in the face of the objection could be held to be regular for any purpose. It was not meant to affirm that mere waiver, or rather the omission to take the objection, is in all cases sufficient to purge the irregularity; and had it appeared that substantial justice had not been done, the objection might well have been taken when it was taken before the Appellate Court, and, when taken, ought to have prevailed. The Committee, being of opinion that there had not in this case been a failure of justice in consequence of the omission to settle issues, was not prepared to send it back for further litigation.—*Mussumat Mitna* v. *Syud Fuzl Rub*. Vol. 13, p. 573.

See EVIDENCE,
MORTGAGE,
NEW SUIT,
PRACTICE.

JAGHIRE.

See SOVEREIGN POWER.

JOINT AND SEVERAL.

See SURETY.

JOINT FAMILY PROPERTY.

See ANCESTRAL PROPERTY,
JOINT UNDIVIDED HINDOO FAMILY.

JOINT OWNERS.

See JOINT UNDIVIDED HINDOO FAMILY.

JOINT UNDIVIDED HINDOO FAMILY.

Where it is allowed that the family lived in commensality, eating together, and possessing joint property, there can be no doubt that the presumption of law is, that all the property they are in possession of is joint property until it is shown by evidence that one member of the family is possessed of separate property.

It is perfectly consistent with the notion of its being joint property that it was purchased in the name of one member of the family, and that there are receipts in his name respecting it.

The criterion in these cases in India, is to consider from what source the money comes with which the purchase money is paid.—*Dhurm Das Pandey* v. *Mussumat Shama Soondri Dibiah*. Vol. 3, p. 229.

The presumption is that a Hindoo family remains undivided, and the *onus* of proving otherwise is on the party asserting a division.—*Naragunty Lutchmeedavamah* v. *Vengama Naidoo.* Vol. 9, p. 66.

A joint Hindoo family consisted of the appellant, the respondent, and a younger brother of the half-blood, a minor, and since deceased. Disputes took place between the adult brothers, and they separated, but there was no regular partition of the estate, the effect of the separation being, that the lands remained undivided, but each brother, being no longer a member of a joint Hindoo family, took his share of the rents. The separation continued for about eleven months, when they agreed to come together again, and a deed of *Ungshobodhareet Puttur* was executed. *Held*, that, a certain Putnee Talook purchased during the separation had been paid for out of the joint family accumulations. That the re-union of the two brothers remitted them to their former *status* as members of a joint Hindoo family, and that the presumption of Hindoo Law in such cases is, that property not shown to be separate is joint. —*Prankishen Paul Chowdry* v. *Mothooramohun Paul Chowdry.* Vol. 10, p. 403.

One *Sheodut Tewarry*, a *Purohit* or priest, had five sons, named *Gungapershad, Moona Loll, Radhakishen, Deenanath, and Rampershad* at the time of his death, and died leaving no ancestral estate. *Deenanath*, sometime after his father's death, left his native village to seek his fortune, with nothing but his brass lotah or drinking vessel, and took service with one *Peroo Mull*, a native banker at Agra. Whilst in that service *Deenanath* realized a small capital by means of private adventures, and with the capital so acquired, and its accretions, established banking firms at Agra, Jhoosee, Gazeepore, Benares, and Mirzapore. *Deenanath*, from motives of family affection, associated with himself, first, *Radhakishen* and *Moona Loll*, and subsequently his other two brothers, each contributing his exertions to the increase of the common stock. Decree of the Sudder Court at Agra to the effect, that, the property in dispute was the joint and undivided property of the five brothers and, that, being a joint family, *Deenanath's* widow, upon his death without issue, was entitled only to maintenance, and not to any share of her husband's estate, which the Court held belonged to the brothers equally, Upheld.

Held, that there was no proof of any special contract, the proof of which lay upon the parties asserting it, which impressed the character of partnership as distinguished from joint or separate property, in the Hindoo sense of these terms, upon the property in question, and that the property was joint in the Hindoo sense of the term.—*Ram Pershad Tewarry* v. *Sheochurn Doss and others; Sheochurn Doss* v. *Ram Pershad Tewarry; Mussumat Thookra* v. *Ram Pershad Tewarry.* Vol. 10, p. 490.

According to the true notion of an undivided family in Hindoo Law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share. No individual member of an undivided family could go to the place of the receipt of rent, and claim to take from the collector or receiver of rents a certain definite share.

The proceeds of undivided property must be brought, according to the theory of an undivided family, to the common chest or purse, and then dealt with according to the modes of enjoyment by the members of an undivided family.

But, when the members of an undivided family agree among themselves with regard to particular property, that it shall thenceforth be the subject of ownership in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with; and in the estate each member has thenceforth a definite and certain share, which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually severed and divided.

There may be a division of right, and there may be a division of property.

With the conversion of the joint tenancy takes place a change in the *status* of the family *quoad* the property mentioned in the agreement as the subject of ownership in defined shares. The produce is no longer brought to the common chest, as representing the income of an undivided family, but the proceeds are to be enjoyed in the specified shares by the members of the

family, who are thenceforth to become entitled to those definite shares. Thus—using the language of the English Law merely by way of illustration—the joint tenancy is severed and converted into a tenancy in common.

Then if there be a conversion of the joint tenancy of an undivided family into a tenancy in common of the members of that undivided family, the undivided family becomes a divided family with reference to the property that is the subject of that agreement, and that is a separation in interest and in right, although not immediately followed by a *de facto* actual division of the subject-matter. This may at any time be claimed by virtue of the separate right.

The Court could find no such doctrine established as had been contended for by the appellant, *viz.*, that if there be a deed of division between the members of an undivided family, which speaks of a division having been agreed upon, to be thereafter made, of the property of that family, that deed is ineffectual to convert the undivided property into divided property until it has been completed by an actual partition by metes and bounds.—*Appovier* v. *Rama Subba Aiyan and others.* Vol. 11, p. 75.

According to the law of the Benares school, where property, originally the ancestral estate, or part of the ancestral estate, of a joint and undivided Hindoo family, is claimed as separate property, the claimant must make a case sufficient to rebut the well established presumption of the Hindoo Law, that a family once joint retains that *status*, unless it is shown to have become divided; and the ancestral property of such a family remains joint, unless it is shown, by partition or otherwise, to have become separate.

The mere record of one name does not establish the exclusive proprietary right of the individual so recorded.

Whenever property is, for whatever reasons, recorded in the sole name of one of several co-proprietors for fiscal purposes, it must obviously be part of the arrangement to make him who is to pay the Government revenue, and through whose hands the collections for the ryots must pass, for that purpose, appear to be the sole owner; yet one so recorded may be really what, according to English Law, would be termed a trustee for the other members of a joint family, and the rights of the co-parceners *inter se* may not be affected by the arrangement.—*Mussumat Cheetha* v. *Baboo Miheen Lall.* Vol. 11, p. 369.

The normal state of every Hindoo family is joint. Presumably every such family is joint in food, worship, and estate. In the absence of proof of division, such is the legal presumption. But the members of the family may sever in all or any of these three things. The family in which a title to a kingdom exists in one member follows this general law, but it follows it in part only, for the succession to a kingdom is an exception to it from the very nature of the thing. The family may have property distinct from that to which a sole heirship belongs, and may continue joint. Still when a *Raj* is enjoyed and inherited by one sole member of a family, it would be to introduce into the law, by judicial construction, a fiction, involving also a contradiction, to call this separate ownership, though coming by inheritance, at once sole and joint ownership, and so to constitute a joint ownership without the common incidents of co-parcenership. The truth is, the title to the Throne and Royal lands is (as in the case before the Court,) one and the same title. Survivorship cannot obtain in such a possession from its very nature, and there can be no community of interest; for claims to an estate in lands, and to rights in others over it, as to maintenance, for instance, are distinct and inconsistent claims. As there can be no such survivorship, title by survivorship, where it varies from the ordinary title by heirship, cannot, in the absence of custom, furnish the rule to ascertain the heir to a property which is solely owned and enjoyed, and which passes by inheritance to a sole heir.—*Neelkisto Deb Burmono* v. *Beerchunder Thakoor and others.* Vol. 12, p. 523.

Decision of the High Court of Madras affirmed, which held, *inter alia*, that there can exist no doubt that there may be a division by mere agreement where no property exists; that it is clear also that the document, if there is one, is only one mode of evidencing the agreement already made; and that the Hindoo lawyers make the question, divided or not, one strictly to be determined by the evidence. The evidence before the

Court being to the effect, that, to avoid further dispute, the parties determined that for the future they would act as men with separate interests, agreed to compromise various questions outstanding between them, and, being determined by the prior determination by the accordance of their Wills, which alone was required, proceeded to record that determination, and to contract with one another, a process which, according to the Hindoo Law, would have been impossible as to their undivided property, until partition—such a contracting being stated by all of the authorities as in itself strong evidence of division—and which agreement, partially acted upon and not denied, was conclusive evidence; the Court was of opinion, that, whether the property in question was actually divided or undivided property, the family was divided.

The Court of the Judicial Committee of the Privy Council, *Held*, that, in this case it must be presumed that although there was no division of the Zemindary, or of the lands, by metes and bounds, yet, that the arrangement proceeded upon the footing of the deed, that the rents were divided according to the stipulations of the deed, and that if the contrary took place, it lay upon the plaintiff to show that such was the case, which he had entirely failed to do.

The ruling of the Court of the Judicial Committee of the Privy Council in the case of *Katama Natchier* v. *The Rajah of Shivagunga* (Vol. 9, p. 539,) was, that the Zemindary should follow the course of succession as to separate property, although the family was undivided.—*Rajah Suraneni Venkata Gopala Narasimha Row Bahadoor* v. *Rajah Suraneni Lakshma Venkama Row.* Vol. 13, p. 113.

The rights of co-sharers or joint owners, as shown by the case of *Appovier* v. *Rama Subba Aiyan and others*, (Vol. 11, p. 75,) are in many important respects distinguishable from those of a joint and undivided family. The joint ownership *status* would, however, only be determined by an actual partition, or an agreement by mutual consent to divide.—*Ram Chunder Dutt* v. *ChunderCoomar Mundul and others.* Vol. 13, p. 181.

The common ancestor having left a childless widow, and also two sons by different mothers, named *Gopinadha* and *Krishna*, disputes as to whose legitimacy arose, each son asserting his own legitimacy and denying that of the other, and a certain family arrangement having been come to between the parties, to the effect, that, the sons were equally entitled to the property left by the father, and that the same should be enjoyed by them as then arranged. *Held*, that a document of this character between natives should not be construed narrowly, by a strict interpretation of the literal meaning of the words, its object and general scope being the best keys to the interpretation of language probably not very carefully studied. That whether both sons were legitimate, or only one legitimate, and to whichever of the two that *status* might really attach, was a question no longer material to the consideration of the rights devolving to persons taking under the compromise and family settlement, by which the *status* assumed was to be taken as the real state of the family. That the finding of the High Court that the brothers were not members of a joint undivided Hindoo family, was correct. That the succession to the property in dispute must be governed by the law which governed the succession to separate estate; and That upon the deaths of the brothers *Gopinadha* and *Krishna*, each leaving a widow, but without male issue, their widows became entitled as Hindoo widows, each to one moiety of the estate.—*Sri Gajapathi Radika Patta Maha Devi Garu* v. *Sri Gajapathi Nilamani Patta Maha Devi Garu and another.* Vol. 13, p. 497.

Suit by plaintiff to obtain a declaration of his right to a share of an estate, which he claimed to be joint family property, and to have his share allotted to him; the defendant contending that it was not joint property, but separate acquisitions after the separation of the family *Held*, that the cesser of commensality was only material to the determination of the issues in the cause, in so far as it removed or qualified the presumptions which the Hindoo Law might otherwise raise, that an acquisition made in the name of an individual son of the family was made by the head of the family, and as part of the family estate; and That, though a cesser of commensality had taken place, the property claimed was joint family property.—*Mussamat Anundee Koonwur*

and others v. *Khedoo Lal.* Vol. 14, p. 412.

See CONFISCATION,
DIVISION,
ILLEGITIMACY,
NATIVE CHRISTIANS,
POLLIAM TENURE,
POSSESSION,
REGISTRATION,
TENANCY IN COMMON,
WIDOW,
WILL,
ZEMINDAR.

JUDGE.

See ASSIGNMENT,
EVIDENCE,
TRESPASS.

JUDGE, PERSONAL KNOWLEDGE OF.

See EVIDENCE.

JUDGMENT.

See CAUSE OF ACTION,
CHARTER,
PRACTICE.

JUDGMENT CREDITOR.

See LIMITATION.

JUDGMENTS, CONCURRENT.

See PRACTICE.

JUDGMENT IN REM.

A judgment is not a judgment *in rem*, because in a suit by A. for the recovery of an estate from B. it has determined an issue raised concerning the *status* of a particular person or family.

Judgment under consideration held to be nothing but a judgment *inter partes.*—*Katama Natchier* v. *The Rajah of Shivagunga.* Vol. 9, p. 539.

It appears extremely doubtful whether there exists in India (exclusive of the particular jurisdictions which are exercised by the High Courts in matters of Probate and the like, and which in the case of war might be exercised in matters of prize,) any ordinary Court capable of giving, what can be called technically a judgment *in rem.*

Surbo Deb Roy Kut, the father of the respondent and grandfather of the appellant, died in 1850, and there arose a contest among the members of his family, children by various wives or concubines, as to who should succeed to the *Raj*, and, with the *Raj*, to the possession of the property. It was admitted that the succession was impartible, and on the death of a *Rajah* passed to the eldest of the sons of equal rank; and it was alleged, though perhaps not admitted, that according to the custom of the family, the issue of one kind of marriage was to be preferred to the issue of another kind of marriage. On *Surbo Deb Roy Kut's* death, *Mukurund Deb*, the father of the appellant, the eldest of his sons, was put in possession by a summary award of a competent Court under Act 19 of 1841. Upon that one of the surviving wives of the *Rajah*, in conjunction with another person, brought a suit on behalf of her infant son, *Rajendro Deb*, in order to have that order of the Court set aside, and to recover from *rund Deb* the possession of the *Raj* and the possession of the property that went with the *Raj*, on the ground that *Rajendro Deb* was the legitimate heir of his deceased father, while *Mukurund Deb* was the son of a slave girl. In this suit it was decided by the Appellate Court that the plaintiff was legitimate, and that *Mukurund Deb* was also legitimate, and that he being at least in equal rank with the plaintiff, and the elder, he was, as between those two parties entitled to succeed to the *Raj*. In the present case, the plaintiff came forward and raised the same question that was raised in the former suit as to the illegitimacy of *Mukurund Deb*, but he also raised the question of a priority of right by reason of the superior nature of the marriage between *Surbo Deb Roy Kut* and his mother. *Held*, that the issues in the two suits were not precisely the same; and that if they had been precisely the same, the Court would still have been of opinion, that the decree in the former suit was not a bar to the prosecution of the present suit. That this case could not in any way be likened to those which sometimes occur in India wherein, the interest of a joint and undivided family being in issue, one member of that family has prosecuted a suit, or has defended a suit, and a decree has been made in that suit which may afterwards be considered as binding upon all the

members of the family, their interest being taken to have been sufficiently represented by the party in the original suit. That it was clear that in this case all the members of the family had conflicting interests. That if such a suit as the first suit had been brought in England, and tried according to the law of that country there could not have been a pretence for saying that the judgment in it was anything like a judgment *in rem*, or that it could bind any but the parties to the suit. That it would have been a mere suit for possession by a party claiming to have a preferable right to the party in possession, and having failed to establish that case by proving the illegitimacy of the other party. That it seemed unnecessary to consider, whether an ordinary Zillah Court in India, could in any case pass a decision which would have the effect of determining the legitimacy of a party against all the world; and That it was sufficient to say, that the judgment pleaded in this case in bar could not be treated as one of that nature upon any principles, whether derived from the English Law, or from the law and practice of India, which could be applied to it.—*Jogendro Deb Roy Kut* v. *Funindro Deb Roy Kut*. Vol. 14, p. 367.

JUDICIAL ACT.

See TRESPASS.

JUNGLE MEHAL.

See BENGAL REGULATION NO. X OF 1800.

JURISDICTION.

Held, That, if a person resident in Benares had been privy to, and persevered and co-operated in, a conspiracy with others, who were in Calcutta, to cause another to be wrongfully arrested there, he was guilty of that misdemeanour, and chargeable with having committed it in Calcutta under the general jurisdiction of the Supreme Court over all persons committing offences there.

Where a misdemeanour is completed, the offence may be charged to have been committed.—*Jannokee Doss* v. *Bindabun Doss*. Vol. 1, p. 67.

Held, that the Sudder Dewanny Adawlut of Bombay had no power to entertain an appeal from the decision of the Collector, confirmed by the Commissioner, passed in respect of certain disputes between Jaghiredars as to their claims prior to Bombay Regulation No. XXIX of 1827.—*Eshwunt Row Thorat Dinkur Row* v. *Nilloba and another*. Vol. 2, p. 107.

Appellants, inhabitants of Benares, but trading in Calcutta, and having a house of business there, *Held*, to be within the jurisdiction of the Supreme Court of Calcutta.—*Baboo Janokey Doss and another* v. *Bindabun Doss and others*. Vol. 3, p. 175.

In an action of trespass brought in the Supreme Court of Bombay, wherein the plaintiff sought to recover damages from the Collector of that place, and one of his assistants, for an illegal distraint, for a balance alleged to be due in respect of a house and piece of ground within the town of Bombay, on account of arrears of an annual quit-rent called *Pension*, in which the defendants objected that the Court had no jurisdiction to try the case, on the ground that it was a matter concerning the revenue, and expressly excepted out of the jurisdiction of the Court by the Statutes 37, Geo. 3, Cap. 142; 21, Geo. 3, Cap. 70, Sec. 8; 4, Geo. 4, Cap. 71, and by the Letters Patent, dated the 8th December 1823, which established the Court, *Held*, that the objection to the jurisdiction of the Court could be taken under the plea of *Not guilty*. That the *Pension* or quit-rent being part of the revenue of the East India Company, the cause of action was a matter concerning the revenue under the management of the Governor and Council of Bombay, and the Supreme Court of Bombay had no jurisdiction to entertain the same; and That if the Supreme Court of Bombay had not jurisdiction over the cause of action, it ought either to have directed a non-suit, or a verdict to be entered for the defendants.—*Spooner and another* v. *Juddow*. Vol. 4, p. 353.

The Legislature of India having passed Act No. 18 of 1848, entitled "An Act for the administration of the "estate of the late Nawab of Surat, and "to continue privileges to his family," a portion of Section 2, of which was to the effect, that no Act of the Governor of Bombay in Council in respect to the administration to, and distribution of such property, from the date of the death of the said Nawab, should be liable to be questioned in any Court of Law

or Equity, and the Governor of Bombay in execution of the power, or duty, or both, conferred on him by this Act, having exercised that power or duty in a manner unsatisfactory to members of the family of the Nawab, in consequence of which petitioners sought to have the case re-heard, or the distribution thought right by the Governor of Bombay in Council, brought under the review of the Judicial Committee of the Privy Council, as a matter of right, and in the exercise of its ordinary jurisdiction. *Held*, that, in the ordinary exercise of their functions, the Judicial Committee of the Privy Council were without jurisdiction to interfere. That the proceeding of the Governor of Bombay in Council was not an act of a Court, Judge, or Judicial officer within the meaning of the 3rd Section of the Statute 3 and 4, Will. 4, Cap. 41, but the act of a person or body not in any sense judicial, delegated and authorized to perform a particular function, as to the responsibility for the exercise of which, or as to any appeal from that exercise, they were exempted by the Legislature which created them.

The Committee desired that nothing said on the present occasion should be understood as referring directly or indirectly to anything that might be thought right to be done under the 4th Section of 3 and 4, Will. 4, Cap. 41, that being a matter with which they had at present nothing to do.—*In re the Nawab of Surat.* Vol. 5, p. 499.

Nothing is more clear than that, with respect to the Criminal Law, the construction is always to be strict: and, putting a strict construction upon the 56th Section of Act 9, Geo. 4, Cap. 74, there can be no doubt that in the first place it extends only to persons who were otherwise amenable to the Criminal jurisdiction of the Supreme Court of Calcutta, who are the persons described in the 1st Section, and that, by the language of the section in question, it applies only to cases in which the felony or crime has been committed by persons who committed that crime partly within the jurisdiction, and partly without.

There can be no doubt that the preamble must be considered as a key to the construction of the Statute, though it would not control every provision, it being often found that the subsequent provisions of a Statute extend beyond the limits of the preamble.

The words, *within the limits of the Charter of the said United Company* are to be construed to mean, *within the limits of the trading Charter of the Company.*

The words of Section 56, of 9, Geo. 4, Cap. 74, do not apply to entire offences, begun and completed within the jurisdiction, but to those partly commenced within, and partly without, which are put on the same footing as if they had been *wholly committed within the jurisdiction.*

The object of this section was merely to apply the improvement of the law, which had taken place in England, to the case of persons amenable to the Court of Justice at Calcutta, who had partly committed an offence in one place, which was afterwards completed in another: and it does not apply to a case where the persons committing the offence were not amenable to the Court at Calcutta, and where the whole offence which had been committed was within one jurisdiction; and the effect of the section is not to make a new enactment rendering persons liable to punishment for a complete offence who would not have been liable before.—*Nga Hoong and others* v. *The Queen.* Vol. 7, p. 72.

A contract was entered into at Rutlam for the establishment of a partnership which was to be carried on principally at Muttra, where all the transactions were to be conducted by means of the capital embarked in the concern at that place. The partnership having been thus established, advances were made from time to time, according to the terms of the partnership, and money was transmitted to Indore and other places. The undertaking, however, being unprofitable, and losses having been incurred, a claim was made by one of the partners for a large balance arising out of the partnership transactions. *Held*, that, if there was a cause of action arising out of the balance resulting from those partnership transactions, that cause of action arose at Muttra, as Muttra was undoubtedly the central place of business; at Muttra the copartnership books were kept; at Muttra the partners would have recourse to those books for the purpose of ascertaining the state of the transactions between them; and if in the result a balance was due, Muttra would be the place where the payment of that balance would have to be made.—*Luckmee*

Chund and others v. *Zorawur Mull and others.* Vol. 8, p. 291.

An appeal had been brought to the Sudder Adawlut of the North-Western Provinces, and the Judges of that Court had given a decision; an application was then made for a review, and an order was made that the case should be heard on review, and it was so heard before four Judges who were equally divided in opinion. By the law, as it then stood, the case was, under the provisions of Section 7 of Bengal Regulation No. VI of 1831, referred for the opinion of one or more Judges of the High Court of Calcutta. The Crown, under 24 and 25, Vic. Cap. 104, erected a High Court in the North-Western Provinces, which had the effect of abolishing the jurisdiction of the Sudder Adawlut, and the consequence was, that no final decision having been given on review, that proceeding was a proceeding pending, which was, therefore, to be decided by the new High Court of the North-Western Provinces. The Chief Justice of the new High Court sat as a single Judge, heard the parties, and gave his final decision. *Held*, that he had jurisdiction so to do.—*Mussumat Oodey Koowur* v. *Mussumat Ladoo and others.* Vol. 13, p. 585.

See ARBITRATION,
CHARITIES,
DIGNITIES,
FOUJDARRY COURT,
JUDGMENT IN REM,
MASTER IN EQUITY,
MINOR,
MOONSIFF,
PRACTICE,
SOVEREIGN POWER,
SPECIAL LEAVE TO APPEAL,
TRESPASS,
UNDER TENANTS,
WASILAT,
WIDOW.

JURY.

See PRACTICE.

JUS TERTII.

See ESCHEAT.

KATTUBADY TENURE.

See AMARAM TENURE.

KHATRI CASTE.

The existence of the *Khatri* caste as one of the regenerate tribes, is fully recognized throughout India; and the *Rajpoots* in Central India, and in the district of Ramnuggur, Zillah Sarun, Presidency of Bengal, are considered to be of that class.

No doubt has ever been raised in the Courts in India as to the existence of the *Khatri* class, as one of the regenerate tribes.

The Courts in all cases assume that the four great classes remain.

According to the Hindoo Law generally prevailing in the district of Sarun, and independently of exceptions arising out of any well established usage or custom to the contrary, as to particular places or families, *Rajpoots* are to be considered of the *Khatri* class.

According to the law prevalent where the property in suit was situated, the illegitimate sons of one of the three regenerate or twice-born races cannot succeed to the inheritance of his father.

The right of an illegitimate child of one of the three regenerate classes to maintenance out of the estate of his father, is recognized by all the authorities on Hindoo Law.—*Chuoturya Run Murdun Syn* v. *Sahub Purhulad Syn.* Vol. 7, p. 18.

KHOTE TENURE.

Upon the question raised on the appeal as to the right of the appellant in his capacity of *Khote* of the village of Ghatkopur in the island of Salsette, to fell and carry away, for the purposes of sale or other disposition as the property of the tenant, Teak, Blackwood, Kheir or other assessed trees, growing within the boundaries of that village, as specified in the Cowl or lease granted to him by the Government for a term of ninety-nine years. *Held*, that, the conditions of the tenancy were described in the lease itself, which determined the contract, and the only contract, between the parties. Decisions of the High Court of Bombay and of the Judge of the District Court dismissing plaintiff's claim for damages against the defendants

for not allowing him to fell unassessed trees in the village, or to apply them to his own use, that is, to carry off the trees from the ground on which they grew, and to dispose of them for the use of the plaintiff, affirmed.—*Ruttonji Edulji Shet* v. *The Collector of Tanna and another.* Vol. 11, p. 295.

KINDRED.

See ADOPTION,
BANDHOO,
WIDOW.

KING.

See ESCHEAT.

KINSMEN.

See ADOPTION,
BANDHOO,
WIDOW.

KURCHA.

See MALIKANA.

KUT KUBALA.

See MORTGAGE.

LACHES.

See DEMURRER,
EVIDENCE,
LIMITATION,
MORTGAGE,
REVIEW OF JUDGMENT,
SPECIAL LEAVE TO APPEAL.

LA KHIRAJ LAND.

The claim of the appellant was to the exemption of eighteen villages in his Zemindary, from assessment to the Government revenue, as being *La Khiraj* lands, there being no proof on the part of the Government that any revenue had been received from the same for seventy years and upwards, and the question at issue was, whether the proofs of exemption or right to exemption required by the Bengal Regulations had been given. *Held*, that, the material Regulations were No. XIX of 1793, and No. XIV of 1825. That under the former it was obvious, that the exclusion or omission from the Decennial and Permanent Settlement of lands, as *La Khiraj*, was of no weight as evidence of title to that exemption, the effect of such exclusion being simply to reserve such cases for enquiry according to the directions of the regulations, whether there is a lawful exemption or not. That under the regulations the general presumption was in favor of the liability to assessment, and that the claimant of *La Khiraj* was to establish his claim, not by inferences and presumptions, but by the positive proof required by the regulations. That by the regulations a claimant must show his own title to exemption, and that no revenue was collected; and That the mere enjoyment in succession, supposing that to be inferred from the evidence, was, by the express terms of the regulations, not enough.

The question whether the right of the Government to assess the villages in dispute was barred by Clause 2, Section 2 of Bengal Regulation No. II of 1805, by reason of sixty years having elapsed since the right of Government to assess the lands had accrued decided in the affirmative.

Held, that, the Collector's Court and summary inquest and proceedings before him, authorized by Bengal Regulations No. II of 1819, No. XIV of 1825, and No. III of 1828, must be considered, for the purposes of the Limitation Regulation—No. II of 1805—a Court of Civil Justice; and That although the question of Limitation had not been raised in the Courts below, or distinctly stated in the printed case before the Judicial Committee of the Privy Council, yet, as the proceedings in the case were not proceedings in a regular suit, and there were no pleadings, it would be hard to bind the parties by so technical an objection, especially if on investigation it were found a valid ground of defence.—*Maharaja Dheeraj Raja Mahatab Chund Bahadoor* v. *The Bengal Government.* Vol. 4, p. 466.

There is a class of lands called *La Khiraj*, which, by reason of a special exemption in a Royal grant, or by having been legally devoted to religious uses, or by other means, have become or are claimed by their owners to be free from *Khiraj*, or assessment to the Government.—*Raja Lelanund Sing Bahadoor* v. *The Bengal Government.* Vol. 6, p. 101.

LANDLORD AND TENANT.

See CONFISCATION,
LEASE,
POTTAH,
SALE FOR ARREARS OF RENT,
SALE FOR ARREARS OF REVENUE.

LAPSE OF TIME.

See DEMURRER.

LAW OFFICERS.

See PRACTICE.

LEASE.

A certain Pergunna was demised to a person to hold as *ijara dar*, or farmer, for seven years, at a fixed annual rental, no formal lease being executed, but the Zemindar issued an *ilam nama*, or notice, to the following effect: "To the Kurmacharies, (accountants,) Ryots, Paiks, (officers of Revenue,) and Kotwals, (officers of Police,) of the Pergunna *Munohir Shahi*, and the other Mouzas and Mahals. The Mahal in question has been given in farm to *Ram Nidhee Ghose* from 1210 to 1216, B. S. (1803-4, to 1809-10, A. D.) a period of seven years; He will receive petitions and Kabooliats, and take possession, and transact business according to rule. You will attend upon him, and cultivate the soil, pay the rent, render papers, and not act contrarily in any way." *Held*, that, such an acknowledgment coming from the Zemindar, was, as against him, conclusive evidence of the terms of the agreement. That by the terms of the grant, and the Hindoo Law, the lease did not terminate with the death of the original grantee, but survived during the remainder of the term to his heirs and representatives; and That those representatives having been improperly evicted by the Zemindar, he was responsible in damages based upon an increased revenue at which he had re-let the Pergunna.—*Maharaja Tej Chund Bahadur* v. *Sri Kanth Ghose and others.* Vol. 3, p. 261.

The Court of Wards, acting in the interests of a minor, upon whom had devolved an estate, which had been leased for a period of ten years by the persons under whom the minor claimed, held to have no authority to interfere with and alter the terms of the original contract, by requiring from the lessee security for the performance of the engagements contained in the original lease, the surety originally accepted as sufficient for that purpose by the original lessors being still alive, and no change being shown to have taken place in his circumstances; and such lessee being improperly ousted he was entitled to recover damages for such illegal ouster.

The original lessee having, subsequently to the granting of the lease, executed a document recognizing certain persons as partners with him in such lease, the plea that there existed no privity of contract between those partners and the original lessors, enabling them to sue for damages for the illegal ouster, held to be of no avail, their suit not being founded upon contract, but upon a wrong alleged to have been done by the representatives of the original lessors, in depriving them of property in which they had a valuable interest.

There is nothing to prevent the surety for the due performance by the lessee of the obligations contained in the original lease taking such an interest under that lease as will entitle him to sue for compensation for an illegal ouster.

The damages in such a case of ouster will be calculated upon the value of the lease at the time of the eviction.—*Raja Burdakanth Roy* v. *Aluk Munjooree Dasia and others.* Vol. 4, p. 321.

Whatever be the interpretation to be given to the somewhat loose and ambiguous expression *a terminable lease*, it is clear that a tenure under which the tenant can no longer be dispossessed by his superior cannot be brought within that exception.—*Baboo Dhunput Singh* v. *Gooman Singh and others.* Vol. 11, p. 433.

See CUTTOOGOOTAGA TENURE,
ENHANCEMENT OF RENT,
POTTAH,
SALE FOR ARREARS OF GOVERNMENT REVENUE,
SPECIFIC PERFORMANCE.

LEGAL DISABILITY.

See LIMITATION.

LEGISLATURE, ACT OF.
See CONSTRUCTION.

LEGITIMACY.

In the case of a Mahomedan child born in wedlock, there being no reliable evidence to show why the ordinary presumption ought not to prevail, it must be deemed the child of the husband.—*Jeswunt Singjee Urby Singjee and another* v. *Jet Singjee Urby Singjee.* Vol. 3, p. 245.

Where it appears that a child has been born to a father, of a mother with whom there has been, not a mere casual concubinage, but a more permanent connection, and where there is no insurmountable obstacle to such a marriage, then, according to Mahomedan Law the presumption is in favor of such marriage having taken place.

One *Mussumat Rai Jan* associated with one *Fyz Ali Khan* during a period of upwards of seven years, remained with the other females in the house of the said *Fyz Ali Khan*, and one *Saadit Ali Khan* was born of her venter, being the offspring of the loins of the said *Fyz Ali Khan. Held*, that, independently of any express acknowledgment of the child by *Fyz Ali Khan*, as his son, there was sufficient evidence to support the legitimacy of the said *Saadit Ali Khan;* and that there seemed to be what was at least tantamount to oral evidence of a declaration, because there was a consecutive course of treatment both of the mother and child for a period of between seven and eight years, under circumstances, in which it appeared next to impossible that such a mode of treatment would have been continued except from the presumption of the co-habitation, and of the son being the issue of the loins of *Fyz Ali Khan.—Khajah Hidayut Oollah* v. *Rai Jan Khanum.* Vol. 3, p. 295.

According to Mahomedan Law, the legitimacy or legitimitation of a child of Mahomedan parents, may properly be presumed or inferred from circumstances without proof, or at least without any direct proof, either of a marriage between the parents, or of any formal act of legitimitation.

In the case before them, the Court found an absence of circumstances, sufficient to found or justify such a presumption or such an inference.—*Mahomed Bauker Hoossain Khan Bahadoor* v. *Shurfoon Nissa Begum.* Vol. 8, p. 136.

According to Mahomedan Law, the presumption of legitimacy from marriage follows the bed, and whilst the marriage lasts, the child of the woman is taken to be her husband's child; but this presumption follows the bed, and is not ante-dated by relation.

An ante-nuptial child is illegitimate. A child born out of wedlock is illegitimate; if acknowledged, he acquires the *status* of legitimacy.

When, therefore, a child, really illegitimate by birth becomes legitimated, it is by force of an acknowledgment express or implied, directly proved or presumed.

These presumptions are inferences of fact. They are built on the foundations of the law, and do not widen the grounds of legitimacy by confounding concubinage and marriage.

The child of marriage is legitimate as soon as born. The child of a concubine may become legitimate, by treatment as legitimate. Such treatment would furnish evidence of acknowledgment.

A Court would not be justified, though dealing with this subject of legitimacy, in making any presumption of fact which a rational view of the principles of evidence would exclude.

The presumption in favor of marriage and legitimacy must rest on sufficient grounds, and cannot be permitted to override overbalancing proofs, whether direct or presumptive.

The case of *Khajah Hidayut Oollah* v. *Rai Jan Khanum*, (Vol. 3, p. 295,) decided, that, not co-habitation simply and birth, but co-habitation and birth, with treatment tantamount to acknowledgment, was sufficient to prove legitimacy. The presumption throughout the whole of that judgment is treated as one of fact.

Upon the pleadings, the *onus* of proof in this case held to be on the respondent to prove his mother's marriage and his own legitimacy as a child of that marriage.—*Ashrufood Dowlah Ahmed Hossein Khan Bahadoor and another* v. *Hyder Hossein Khan.* Vol. 11, p. 94.

See also *Wise and another* v. *Sundu-loonissa Chowdranee and others*, (Vol. 11, p. 177,) in which the evidence was held

sufficient to confer on a child the *status* of legitimate son, and upon his mother that of lawful wife by a *Nicka* marriage.

The legal presumption in favor of a child born in his father's house of a mother lodged, and apparently treated as a wife, treated as a legitimate child by his father, and whose legitimacy is disputed after the fathers's death, is one safe and proper to be made; and the opposing case should be put to strict proof.—*Ramamani Ammal* v. *Kulanthai Natchear and others.* Vol. 14, p. 346.

See ADOPTION,
CHILDREN,
EVIDENCE,
ILLEGITIMACY,
KHATRI CASTE,
MARRIAGE.

LETTERS.

See LIMITATION.

LETTERS PATENT.

See JURISDICTION.

LEX FORI.

See LIMITATION,
NATIVE CHRISTIANS.

LEX LOCI.

See CHILDREN,
LIEN,
NATIVE CHRISTIANS.

LIEN.

Appellant purchased from one *Gulam Asen Khan Bahadur* the *Muttah* of *Ekattur*, and paid the sums of Rupees 8,049-4-0, and Rupees 200 towards the price thereof. *Gulam Asen Khan Bahadur* being unable to hand over the title deeds of the property at the time of sale, agreed that the appellant should retain the residue of the purchase-money, and receive on deposit the title deeds of the *Muttah* of *Tirupassur*, to be held by him by way of equitable mortgage, as a security for the delivery to him of the title deeds of the *Muttah* of *Ekattur*, to perfect his title. Appellant afterwards paid a further sum on account of his purchase, and was subsequently obliged to pay to one *Mahomed Usen* a sum of Rupees 5,761 due him as mortgagee of the *Muttah* of *Ekattur*, in order to prevent the sale thereof and to obtain from him the title deeds thereof; which payments in the whole exceeded the purchase-money agreed upon by the appellant to be paid for the *Muttah* of *Ekattur* by the sum of Rupees 3,810-4-0. *Held*, that, the appellant had a lien upon the *Muttah* of *Tirupassur* for the sum so overpaid.

The plaintiff in this case being a Christian, and from his name an Armenian, the 1st and 2nd defendants Mahomedans, the 3rd defendant a Hindoo, and the last on the record a Christian and a British subject; and the Sudder Dewanny Adawlut at Madras having pronounced against the enforcement of the lien against the 3rd and last defendants, upon the ground that the principles of the English Law applicable to a similar state of circumstances ought not to govern the decision. *Held*, that, this would have been correct if the authoritative obligation of that law were insisted on; but that there was no prescribed general law to which their decisions must conform. That they were directed in the Madras Presidency to proceed generally according to justice, equity and good conscience. That the question in this appeal was whether the decision appealed against violated that direction or not. That by the Mahomedan Law, such a contract as the one under consideration, for a security in respect of a contingent loss, would be one, not of pawn, but of trust. That the plaintiff being a Christian, the contract having taken place with parties living within the local limits of the Supreme Court of Madras, though it related to land beyond them; it not being shown that any local law, any *lex loci rei sitæ* existed forbidding the creation of a lien by the contract and deposit of deeds which existed in this case; and, as by the general law of the place where the contract was made, that is the English Law, the deposit of title deeds as a security would create a lien on lands; though as between parties who can convey by deed only, or conveyance in writing, such lien would necessarily be equitable. That in this case there was an express contract for a security on the lands, to which, no law invalidating it,

effect must be given between the parties themselves. That the contract having created between the parties a lien on the land, it was immaterial for the decision of this suit to consider or decide whether that lien between the parties, looking to the power of the first defendant to convey without writing, was legal or equitable.

As one who owns property subject to a charge can, in general, convey no title higher or more free than his own, it lies always on a succeeding owner to make out a case to defeat such prior charge.—*Varden Seth Sam* v. *Luckpathy Royjee Lallah and others.* Vol. 9, p. 303.

The question in the case being; 1, whether, under the circumstances, the appellants had a lien upon a certain estate in respect of a sum paid by the party they represented, who was the representative of the mortgagees of the estate, to the Collector under Section 9 of Act 1 of 1845, to save their mortgage and the estate, and to prevent the sale of the latter under Act 1 of 1845, discharged from their mortgage and all other incumbrances, for default in payment by the widow of the mortgagor of the revenue due to Government; and, 2, whether upon the evidence the appellants had established their right to have the estate sold to discharge such amount paid for revenue. *Held*, that, there were two courses open to the person who paid the revenue in default, *viz.*, she might have instituted a suit to enforce the mortgage, and to tack to the mortgage the amount of the revenue paid to save the estate, and to have the estate sold to pay that amount; or, she might have proceeded under the 9th Section of Act 1 of 1845; and she might probably have united both these objects in one plaint; but the course she did pursue was, to sue the widow of the mortgagor alone under the 9th Section of Act 1 of 1845, not making the persons interested in the reversion after her decease party defendants to that suit, and not praying that the estate in its entirety might be sold to pay the amount due to her, and the plaint not raising any claim against the estate itself; the claim being against the widow personally, she being a childless widow in possession. That Section 9 of Act 1 of 1845, clearly authorizes a personal action, but gives no remedy against the land, which it leaves to the then existing law.

The decree made in the suit being no decree against the land, but a general decree against the mortgagor's widow, when execution was sought to be enforced against the widow by a sale of the whole estate, the person entitled to a reversionary interest in the estate intervened to prevent a sale thereof in its entirety; and the decree-holder then for the first time raised the claim that as the estate in its entirety had been saved from sale by the payment of the arrears of revenue, the estate in its entirety was liable to be sold in order to obtain re-payment of that amount, which claim to make the estate generally liable to pay the debt was refused, on the ground that the question could not be taken into consideration in an execution case, but must be determined in a civil action, whereupon the suit out of which the present appeal arose was instituted, in which the plaint did not seek to obtain a determination that the money paid for the arrears of the revenue constituted a charge upon the estate, all that it did being to constitute a suit to recover the amount of the decree, with interest and costs, and to have the estate sold for that purpose. Upon appeal the Judicial Committee of the Privy Council confirmed the decision of the High Court of Calcutta, which was to the effect, that, the decree against the widow was a personal one, and that consequently the action of the Court in execution must be confined to her interest in her husband's estate, and that the rights of her husband in the estate, or the portion of the estate upon which an equitable lien was acquired could not be brought to sale.

The Court remarked that it was not the question whether the person who pays the arrears of revenue does not thereby acquire a charge upon the estate, but, whether, if he seek to enforce that right, he must not do so in a suit properly framed for that purpose, and not merely in a suit which is confined to a personal remedy against the person in possession of the estate.

The Court further wished it to be understood that it left unimpaired the general rule, that in a suit brought by a third person, the object of which is to recover from, or to charge upon, an estate of which a Hindoo widow is the porprietress, such widow, will, as defendant, represent and protect the estate, as well in respect of her own, as

of the reversionary interest; and remarked, that in the present case the widow had been charged with having sought to destroy the estate by causing it to be sold for arrears of revenue, that if such charge was true the reversioners were entitled to recoup out of her life-profits, the money which was advanced to avert a sale if they redeemed, as they were entitled to do, the actual salvors, and that it would be obviously inequitable for a person with such knowledge of the dealings of the proprietress, determining to salve the estate, to seek indirectly its destruction by a sale of the whole estate under an ordinary execution, without giving the reversioners the means of protecting their interests, by making them parties to a suit, the object of which, by a mortgagee who advances to save the estate, should properly be to have an additional charge declared in his favor on it, subject to redemption, and in default of redemption only, seeking a sale.—*Nugenderchunder Ghose and another* v. *Sreemutty Kaminee Dossee and others.* Vol. 11, p. 241.

In a suit to set aside as fraudulent and void as against creditors a conveyance of certain real estate to secure the re-payment of an alleged debt due by the assignor to the estate of his grandfather. *Held*, that, if the defendants asserted themselves to be entitled to a lien upon the estate of the assignor in respect of such debt, independently of the deed of assignment,—and, upon well known principles of equity, independent of contract—the attempt to enforce such lien could only be by other proceedings, *viz.*, a Bill in the nature of a cross Bill, insisting upon that equity, and undertaking to prove the facts which it would be necessary to prove in order to give effect to the equity, if it existed.—*Tareeny Churn Bonnerjee* v. *Maitland and another.* Vol. 11, p. 317.

See DOWER,
INSOLVENCY,
MORTGAGE.

LIFE INTEREST.

A widow, under a family arrangement or compromise of disputes, was paid a sum of Rupees 59,000 as the admitted amount of the share of her deceased husband in the estate of his father, paid to her in her character of widow, and the deed of arrangement, which was in the English language, contained a declaration to the effect, that, she was to hold the Rupees 59,000 as her own sole and exclusive property for her own absolute and separate use. *Held*, that, the words *to her separate use* meant not to her separate use in the sense in which that term is used in a Court of Equity, but to her separate use as distinguished from the joint estate, dividing that which was joint into separate estate, and treating her share as being that which she was to take for her absolute use in her representative character, subject to any claims that might exist upon the same; for *her sole absolute and exclusive use* as against the parties to the deed. That as to the term *use and benefit* used in the deed, the Court must look at the words with reference to the parties using them, and the grant must be consistent therewith. That if these funds were assets, were paid as assets, and were assets in the hands of the defendant, it followed that upon the decease of the widow they must be handed over to the person who then represented the estate of her deceased husband, and that such representative might hold them, subject to the debts of the deceased husband, whatever they might be.—*Sreemutty Rabutty Dossee* v. *Sibchunder Mullick.* Vol. 6, p. 1.

See EXECUTION,
WILL.

LIMITATION.

An offer of a specific sum of money by way of compromise, in no way involving an admission of the justice of the plaintiff's demand, further than what might be inferred from the offer of any compromise—an inference which is never permitted—and the continued residence of the defendant at Poonah, out of the jurisdiction of the Courts of the East India Company, there being no evidence to show that the plaintiff might not, by adopting the proper steps, have obtained redress in the Mahratta Courts at Poonah. *Held*, not to be proofs of an admission of the truth of the plaintiff's demand, or a good and sufficient cause why he had been precluded from obtaining redress within the time limited by Bombay Regulation No. 1 of 1800, so as to entitle the plaintiff to bring his suit after the expira-

tion of the period of twelve years mentioned in the 13th Section of that regulation.—*Bhaeechund and another* v. *Purtabchund Manikchund.* Vol. 1, p. 154.

Section 13 of Bombay Regulation No. I of 1800, prohibiting the Judge hearing, trying, or determining the merits of any suit whatever, against any person or persons, if the cause of action shall have arisen twelve years before the suit shall have been commenced, unless the plaintiff can bring his case within the exceptions therein. *Held*, to be a bar to a suit for the recovery of, 1, a share of the produce of several villages attached to a certain hereditary revenue office under the *Mahratta* Government called *Desaye;* 2, the income of land assigned by Government for the support of village officers, known as *pussaita* land; 3, a village in *Enam;* and 4, a portion of the *sayer* duties or inland customs and taxes of a certain other village; such suit not having been brought within the period limited by the said section.—*Nundram Dyaram and others* v. *Dula Bhaee Kurparam and others.* Vol. 1, p. 414.

Plaintiff's right of action having commenced long anterior to the period limited by the Bengal Limitation of Suits Regulations then in force, and no case of fraud having been established against the defendant, the plaintiff's suit was held barred.—*Rajah Dundial Sing and others* v. *Rajah Anund Kishwur Sing.* Vol. 1, p. 482.

A suit to recover payment of sums claimed by certain persons as hereditary officers, and arising out of a grant by the Sovereign proprietor of the territory, by which the possessors thereof were bound to contribute to the maintenance of such hereditary officers. *Held*, to fall within the 4th Section of Bombay Regulation No. V of 1827, limiting the period of recovery to twelve years.—*Beema Shunker and others* v. *Jamasjee Shaporjee and others.* Vol. 2, p. 23.

In a suit against Government by the heir of a deceased Enamdar for recovery of a village granted by the Peishwa of the Deccan, and seized by the farmer of the revenues upon the death of the original grantee, and which village subsequently came into the possession of the Government, and also for the revenue arising therefrom. *Held*, that, the recovery of the arrears of revenue was limited to six years, the liability to refund the money received, being a money debt.—*Mills* v. *Modee Pestonjee Khoorsedjee.* Vol. 2, p. 37.

When the question of a claim to an estate arises between the purchasers of that estate from persons who have been permitted to hold themselves out to the world as proprietors for more than twelve years before the purchase, and an owner by whose neglect they had thus been enabled to assume the character of proprietors, the Court ought to have some other facts than mere distant residence, to make out the proof, under the Bengal Regulations, of some good and sufficient cause that has precluded an earlier assertion of a right that must have been well known to the claimant from the beginning, to bring the claimant within the exceptions under the regulations.

Therefore, where plaintiff's cause of action arose twenty-five years before the commencement of the suit and no other suit was ever instituted by her on account of it, and the cause relied on to bring herself within any of the exceptions to the twelve years' limit was, that she resided at a place several hundred miles distant from where the estate was situate, and from the tribunal before which alone she could have preferred her claim. Such proof *Held*, not to bring her within the exception.

The main object of the Laws of Limitation is, to protect an honest purchaser from the consequences of an owner's neglect to assert his rights, and thus giving to an usurper the semblance of a title which he does not really possess, and by the express words of Bengal Regulation No. II of 1805, the proof of the fraudulent, unjust, or dishonest acquisition is thrown upon the plaintiff.

It is necessary for a plaintiff to show that the person under whom an occupant by just title, acquired within the twelve years, derives his title, acquired his possession by a title which he did not at the time believe to be just and valid.

To avoid the effect of the lapse of time the plaintiff must establish the existence of conscious injustice by proof.—*Sheikh Imdad Ali and others* v. *Mussumat Kootby Begum.* Vol. 3, p. 1.

Decree of the Sudder Special Com-

mission appointed under Bengal Regulation No. I of 1821, for the ceded and conquered provinces under the Presidency of Bengal, confirmed, whereby a sale by auction for arrears of revenue of certain lands which had taken place in 1802, was set aside, although no suit to set aside such sale was brought until 1820; the lapse of time not being an objection to the jurisdiction, or a bar to relief, in such a case as the one under consideration.—*Maharajah Ishuree Persad Narain Sing and another* v. *Lal Chutterput Sing.* Vol. 3, p. 100.

Plaintiff having claimed to be entitled to one-half share of the profits and receipts of an estate attached to the hereditary office of *Deshmook*, a revenue office held under the *Mahratta* Government by the common ancestor of himself and of the defendants, and his claim not having been brought until forty-two years after defendants had been in possession of such estate, to bring himself within the exception contained in Bombay Regulation No. V of 1827, pleaded, a claim preferred to an authority having a right to try and decide the question, upon which no decision had been come to before the establishment of the British authority in the district in which the property was situate, within the period of 30 years' limitation as bringing him within the exception of the regulation. *Held*, that, the Court to which plaintiff's application—made before the territory in which the estate in question was situate, came under the British rule—was made, was then the Supreme power in the State having authority to decide between the parties, and brought him within the exception —*Jewajee and others* v. *Trimbukjee and another.* Vol. 3, p. 138.

The rule is firmly established, that in assumpsit, the breach of contract is the cause of action, and that the Statute runs from the time of the breach, even where there is fraud on the part of the defendant.

Plaintiff bought at public auction a quantity of salt, to be delivered to him as he might desire the same, within a certain limit. The contract was broken. His cause of action accrued when, upon application to the defendants for delivery of a certain portion thereof, he was told there was no salt to deliver to him.

There may be an agreement that, in consideration of an enquiry into the merits of a disputed claim, advantage shall not be taken of the Statute of Limitations in respect of the time employed in the enquiry, and an action might be brought for the breach of such an agreement; but, if to an action for the original cause of action, the Statute of Limitations is pleaded, upon which issue is joined, proof be given that the action did clearly accrue more than six years before the commencement of the suit, the defendant, notwithstanding any such agreement, is entitled to the verdict.—*East India Company* v. *Oditchurn Paul.* Vol. 5, p. 43.

It has become almost an axiom in jurisprudence, that a Law of Prescription, or Law of Limitation, which is meant by that denomination, is a law relating to procedure, having reference only to the *lex fori.*

While the Courts of almost all civilized countries entertain causes of action which have originated in a foreign country, and adjudicate upon them according to the law of the country in which they arose, yet such Courts respectively proceed according to the prescription of the country in which it exercises its jurisdiction.—*Her Highness Ruckmaboye* v. *Lulloobhoy Mottichund.* Vol. 5, p. 234.

An attempt after a long lapse of years, to impeach the title of a person, who, if there had been fraud, appeared to the Court to have been a sufferer from that fraud, and in no sense a participator in it, in which fraud had been alleged, so as to bring the case within the exception to the ordinary law of limitation, held to have entirely failed upon the merits.—*Cochrane* v. *Hurrosoondurri Debia and others.* Vol. 6, p. 494.

The words *other good and sufficient cause* contained in Clause 3, Section 18 of Bengal Regulation No. II of 1803, include *insanity*, (whether there has been a Commission of lunacy or Committee of the estate appointed, or any analogous measure, or not.)

The word *precluded* does not mean precluded during the whole of the term of twelve years, or at its commencement, but means, in effect, precluded during any part of it.

The meaning and intention of the framers of the Regulation No. II of 1803, are shown by it to have been that, in

computing the twelve years mentioned in it, there should not be reckoned any time elapsing while the person for the time being entitled to seek redress, was not free from disability.—*Troup and others* v. *East India Company; Dyce Sombre* v. *East India Company.* Vol. 7, p. 104.

The object of Bengal Regulations No. III of 1793 and No. II of 1805, was to protect the title of parties who had been in possession under a *bonâ fide* title, or what was supposed to be a *bonâ fide* title for the period of twelve years.

But certain exceptions were introduced into the regulations, amongst others, that the limitation of twelve years was not to apply where the party had been precluded by good and sufficient cause from bringing his suit within that period. Neither was it to apply if the original possession obtained by the party in possession had been obtained unjustly; and the regulations were not to apply in cases where the property had so come into the hands of other persons from whom the parties in possession might have derived their title, and should not have been subsequently held under a just and honest title. Certain pending legal proceedings held to have been good and sufficient cause to prevent the application of the Regulations of Limitation; and further that no *bonâ fide*, quiet, unmolested possession of the parties against whom the suit was brought, barring the suit, had been shown.—*Rajah Enayet Hossein* v. *Sayud Ahmed Reza and another.* Vol. 7, p. 238.

In a suit instituted in August 1845, by the father of the appellant, for the recovery of seven hundred begahs of land, admitted to have been in the possession of the respondents, though by alleged wrongful title, since May 1834, or from a period commencing soon after that date, and in which the respondents pleaded, amongst other things, that the appellant and his father had been out of possession for upwards of twelve years, and was therefore barred by the then Regulation of Limitation. *Held*, that, the appellant seeking to disturb the possession, admitted to have existed for about eleven years, of the respondents, who insisted on a possession of much longer duration as a statutory bar to the suit, it clearly lay upon the appellant to remove that bar, by satisfactory proof that the cause of action accrued to him on a dispossession within twelve years next before the commencement of the suit; and, therefore, that he, or some person through whom he claimed, was in possession during that period; and further that no proof of anterior title could relieve him from this burthen, or shift it upon his adversaries by compelling them to prove the time and manner of dispossession.—*Maharajah Koowur Baboo Nitrasur Singh* v. *Baboo Nund Loll Singh and others.* Vol. 8, p. 199.

A claim by the East India Company to enforce their rights to recover costs, awarded them in an appeal to the Judicial Committee of the Privy Council, prosecuted by them under the Statute 3 and 4, Will. 4, Cap. 41, Sec. 22, and orders in Council of the 4th September and 18th November 1833. *Held*, not to be a *public right* within the meaning of Clause 2, Section 2 of Bengal Regulation No. II of 1805, making the period of limitation sixty years from and after the origin of the cause of action; and further, that such claim not having been brought within twelve years was barred by Section 14 of Bengal Regulation No. III of 1793.—*The Bengal Government* v. *Mussumat Shurruffut Oonnissa and another.* Vol. 8, p. 225.

The Court being of opinion that the respondent had been continually endeavouring by resort to competent Courts to recover his rights as to certain mesne profits claimed by him, *Held*, that, he was not ousted from availing himself of the exception in the Laws of Limitation by reason that part of the proceedings were erroneous.—*Doorga Persaud Roy Chowdry* v. *Tara Persaud Roy Chowdry.* Vol. 8, p. 308.

Plaintiffs had preferred their claim within the prescribed period to a Court of competent jurisdiction, and had been prevented from commencing their suit in proper time by no neglect on their own part, but by the irregular proceedings of the Court to which their claim was preferred. *Held*, that, it would be contrary to all reason and justice to hold that, under such circumstances, the plaintiff's suit could be barred by the regulation applicable thereto.—*Naragunty Lutchmeedavamah* v. *Vengama Naidoo.* Vol. 9, p. 66.

A bond was executed in Oude before that kingdom was annexed to the terri-

tories of the East India Company, and dated November 23rd, 1855, and was sued upon on the 7th April 1860, in the Court of the Civil Judge at Lucknow. *Held*, that, Section 9 of Circular Order No. 104 of 1860, to the following effect: "Suits for money lent for a "fixed period, or for interest payable on "a specified date or dates, or for breach "of contract, unless there is a written "engagement or contract, and, where "Registry offices existed at the time, "such engagement was registered with-"in six months of its date, and signed "by the party to be bound thereby, or "his duly authorized agent," meant, that the rule referred to in it was not to apply where there was a written engagement, and where, there being a written engagement, it was registered within six months of its date in cases in which a Registry office existed at the date of the engagement; and that, there being in this case a written engagement and no Registry office at the date of the engagement, the section did not affect the case. That the case fell within the six years mentioned in Section 14 of the same Circular order, which was in the following terms: "All suits on bonds "registered within six months of their "date, or on bonds formally attested "when there were no means of register-"ing, and all other suits for which no "other limitation is expressly provided "by these rules;" and that Act 14 of 1859 was not applicable to the case.—*Saligram and another* v. *Mirza Azim Ali Beg*. Vol. 10, p. 114. See also *Shah Mukkun Lall and others* v. *Nawab Imtiazood Dowlah and another*. Vol. 10, p. 362.

In December 1833, a Zemindary was put up for sale by public auction, to satisfy arrears of Government revenue, and one *Bhobanny Acharjee Chowdry* became the purchaser, to whom possession of the lands in question was ordered to be given, and his agent was put in possession. His possession however was disputed by certain persons claiming to have been in possession of a portion of the property as Talookdars at the time of the sale. The Sudder Court ordered possession to be restored to them, leaving the purchaser to institute a Regular Suit to set aside such possession, and the Talookdars were put in possession of part of the lands claimed by them in December 1840, and of the rest in 1841. About 1840 or 1841, the purchaser died, leaving a widow, who under a Will made by her husband adopted a son, and in 1853, instituted a suit for recovery of the property, which suit failed on merely technical grounds; and in 1855, the suit under appeal was commenced. *Held*, that, the suit must be treated as if it had begun in 1853. That when the possession was taken from the purchaser in 1840 or 1841, was the period from which the time must be computed; and that the death of the purchaser, and the minority of the heir would clearly take the case out of the Regulation of Limitation. Bengal Regulation No. III of 1793, Section 14.—*Wise and another* v. *Bhoobun Moyee Debia Chowdrainee and another*. Vol. 10, p. 165.

The appellant and those under whom she claimed had been in peaceable and undisturbed possession of the property claimed for more than sixty years, which property was situated within, and parcel of, a four-anna share of a Zemindary of which the respondent, as mother and guardian of her son, a minor, was the proprietor in possession. The appellant claimed under a grant from the ancestor of the respondent, which purported to have been made for the setting up of an idol, and concluded thus: "Having set up the said idol in the "said house, you will enjoy the same "without paying rent, through sons and "grandsons. For this purpose I have "given you this *Bromuttur pottro*." The date of the instrument corresponded to the 10th February 1796, and the idol had remained and its worship had been continued uninterruptedly from that time. The respondent's plaint, which was not filed until the 15th April 1857, was preceded by no demand for rent, nor any suit for the assessment of it, but the rent sued for, *viz*., arrears for six years and nine months preceding the commencement of the suit, was stated to be "in accordance with the "rate of rent obtaining in lodging houses "at this place of Nusseerabad." *Held*, that, the appellant was entitled to have the suit dismissed upon the ground of there having been peaceable possession by her, and those under whom she claimed, for sixty years before the suit was commenced, and the suit being therefore barred by the early part of the 3rd Clause of Bengal Regulation No. II of 1805, which branch of the Clause in

its very comprehensive language embraced every then existing regulation by which any Court in Bengal was authorized to take cognizance of any suit whatever; and which, in effect, took away that authorization if the cause of action should have arisen sixty years before the institution of the suit; and distinguished between the effect of the twelve years' limitation, and that of sixty, by precluding all enquiry into any original defect in the title under which the possession for the latter period commenced; and made it, in effect, in cases in which the section applied, unavailing to show that the possession of the appellant commenced under a grant made null and void by the Regulation of 1793.—*Mussumat Chundrabullee Debia* v. *Luckhea Debia Chowdrain.* Vol. 10, p. 214.

Unsigned letters offering to pay certain principal monies by instalments, and praying to be excused from the payment of interest, would, according to English Law, before Lord *Tenterden's* Act have been an ample acknowledgment to take a case out of the Statute of Limitations, and there is nothing in the Punjab Code that would lead to a different construction.—*Shah Mukhun Lall and others* v. *Nawab Imtiazood Dowlah and another.* Vol. 10, p. 362.

The Court considering that the possession of the plaintiff was not, in fact, disturbed until within the period of twelve years from the institution of the suit. *Held*, that, the claim was not barred by limitation.—*Tarakant Bannerjee* v. *Puddomoncy Dossee and others.* Vol. 10, p. 476.

The operation of Act 13 of 1848 is limited to awards made by the Collectors under Bengal Regulations No. VII of 1822, No. IX of 1825 and No. IX of 1833, which gave to the revenue authorities judicial power to determine certain questions of possession and other matters, with a right of appeal to the regular Courts against their awards. That right of appeal is by the Act of 1848 subjected to the three years' limitation.—*Jowala Buksh* v. *Dharum Singh and others.* Vol. 10, p. 511.

Act 1 of 1845 was not designed to protect a fraudulent purchaser.—*Nuwab Sidhee Nusur Ally Khan* v. *Rajah Ojoodhyaram Khan.* Vol. 10, p. 540.

If an owner whose property is encroached upon, suffers his right to be barred by the Law of Limitation, the practical effect is, the extinction of his title in favor of the party in possession.

It is of the utmost consequence in India that the security which long possession affords should not be weakened.

If twelve years peaceable and uninterrupted possession of lands, alleged to have been enjoyed by encroachment on the adjoining lands, can be proved, a purchaser may take that title in safety, but if the party out of possession could set up a sixty years' Law of Limitation merely by making common cause with a Collector, who could enjoy security against interruption? The true answer to such a contrivance is, that the legal right of the Government is to its rent; the lands are owned by others. As between private owners contesting *inter se* the title to the lands, the law has established a limitation of twelve years, after that time it declares not simply that the remedy is barred, but that the title is extinct in favor of the possessor. The Government has no title to intervene in such contests, as its title to its rent in the nature of *jumma* is unaffected by transfer simply of proprietory right in the lands. The liability of the lands to *jumma* is not affected by a transfer of proprietory right, whether such transfer is effected simply by transfer of title, or less distinctly by adverse occupation and the Law of Limitation.—*Gunga Gobind Mundul and others* v. *The Collector of the 24-Pergunnahs and others.* Vol. 11, p. 345.

Appellant was a Zemindar; those whom she represented had granted a *Putnee Talook*, and the Putneedars had fallen into arrears of rent. The appellant, the Zemindar, pursued the remedy under Bengal Regulation No. VIII of 1819, and brought the talook to sale, when it sold for a sum greatly in excess of the rent in arrear; out of the purchase-money the arrears were paid, and the balance remained in the Collector's office for the benefit of those entitled to it. Subsequently the sale was set aside for irregularity, the first judgment in the suit being given on the 26th December 1860. The appellant brought her appeal, in the High Court of Calcutta, and final judgment, dismissing her appeal, was delivered on the 30th June 1863. The effect of the judgment was, that she had to pay back the purchase-money to

the purchaser, with interest, that the Putneedars were again put in possession of the talook, and that they recovered the mesne profits during the period in which they were out of possession from the purchaser. The appellant then on the 5th October 1863, brought a suit for recovery of the arrears of rent under Act 10 of 1859. She was met by the defence that the suit was out of time, as it was barred by the 32nd Section of that Act, the construction put upon that enactment being, that the suit should have been brought within three years from the time on which these arrears first became due, *viz.*, the last day of the year for which the rents constituting them had accrued. *Held*, that, upon setting aside the sale, and the restoration of the parties to possession, they took back the estate subject to the obligation to pay the rent. That the particular arrears of rent claimed in this action must be taken to have become due in the year in which that restoration to possession took place; and that, it followed, from the language of the 32nd Section of Act 10 of 1859, that the appellant was not barred from her remedy.—*Mussumat Ranee Surno Moyee* v. *Shooshee Mokhee Burmonia and others.* Vol. 12, p. 244.

The question raised by the issue as settled by the Principal Sudder Ameen, being, not whether certain deeds impeached were genuine, but whether the appellant was precluded by the Law of Limitation from showing that they were not genuine, in which case the twelve years' period of limitation was to be calculated not necessarily from the date of the deeds impeached, but from the time when the appellant having notice of them might first have brought his suit to impeach them, and the Court of First Instance having held that the period of limitation was to be calculated from the date of the deeds, and finding the issue of limitation against the appellant, having dismissed the suit without going into the merits; (the High Court, in effect, confirming such decision,) *Held*, that such decision could not stand; and the cause was remanded for trial on its merits; and, the miscarriage being that of the Judge, costs ordered to be costs in the cause, to be dealt with on the remand.—*Rajah Sahib Perhlad Sein* v. *Run Bahadoor Singh and others.* Vol. 12, pp. 289, 332.

It would be very dangerous to lay down, as a rule, that the pendency of an appeal to England puts the party who, subject to that appeal, is the owner of an estate, under a legal disability to bring a suit in that character against third parties, (*i. e.*, so as to exclude the time occupied therein from the period of limitation.)

The question between the parties being, simply one of boundary, the respondent alleging that the boundary in dispute had been fixed by a decision of the *Thakbust*, or survey authority on the 11th February 1848, and that under Act 13 of 1848, the appellant's suit was barred because it was brought more than three years after the date of that decision, and also alleged that it was barred by the general Law of Limitation, the plaint having been filed on the 31st December 1861. *Held*, that, the Courts below had properly come to the conclusion that the suit was barred by the general Law of Limitation.

The Court was not prepared to say that the *Thakbust* proceeding might not be an award under Bengal Regulation No. IX of 1825, within the meaning of the regulation.

Section 32 of Act 8 of 1859, shows that the plaintiff is bound to satisfy the Court that his right of action is not barred by lapse of time.—*Rajah Sahib Perhlad Sein* v. *Maharajah Rajender Kishore Sing.* Vol. 12, pp. 292, 334.

It is incumbent on those who take proceedings after the period of limitation has passed, to show some circumstances which will take the case out of the operation of the ordinary rule.

There is no foundation, in principle or authority, for any distinction to be made in favor of a person claiming under an execution sale, as contradistinguished from the representatives of any person claiming under an ordinary assignment, or conveyance.—*Rajah Enayet Hossain* v. *Girdharee Lall and others.* Vol. 12, p. 366.

Upon the true construction of the Law of Limitation under Bengal Regulation No. III of 1793, it is sufficient for a plaintiff, in order to bring his case within the exception in Section 14 of that regulation, to show by *clear and positive proof* that within the prescribed period he asserted his claim, and that the defendant admitted the claim to be

as of right. It is not necessary that a precise sum should be mentioned by either party, or that a promise to pay should be made by the defendant.

Clear and positive proof is such, as, upon the case made, leaves no reasonable doubt as to the matter required to be proved, the truth of which it establishes to a moral certainty; and it is by the combined effect of the whole evidence that it is to be judged whether the proof is *clear and positive*.

It is one thing to acknowledge a debt, and another to promise to pay it, and this distinction is recognized.—*Gopeekishen Goshamee* v. *Brindabunchunder Sircar Chowdhry and others.* Vol. 13, p. 37.

An original judgment debtor having died, the appellant applied to the Judge for process of execution against the respondents as the heirs of the judgment debtor, and on the 26th December 1861, this application was made to assume the form of a cause. In February 1862 the respondents filed a petition objecting to execution proceeding, on the grounds, that it was barred by limitation, and that no estate of the judgment debtor had come into their possession, and there was, therefore, a *litis contestatio* between the parties to the suit, the representatives of the defendant to the original suit appearing and contesting the right of the appellant to have the benefit of the execution against the original defendant. In March 1862, the appellant put in a petition by way of answer to the respondent's petition, contesting the allegations therein made. On the 4th March 1862, the Principal Sudder Ameen ordered that on the last petition, if there were no objection, the notice of sale should be drawn up in due order; and on the 29th November 1862, a species of hearing was brought on before the Principal Sudder Ameen, for the purpose of discussing all or some of the allegations made in the petitions, and on that day the Principal Sudder Ameen pronounced his opinion in the following terms, "Whereas the heir of the judg-"ment debtor is a respectable woman, "the final process cannot be issued "against her. Let the number of the "suit be struck off from this record, at "present." *Held*, that, whether that was meant to be a final judgment or only a temporary delay interposed in the proceeding of the suit, it was at this point, and at this point for the first time, that the suit, which up to that time had been pending, was disposed of by any order of the Court. That up to that time there appeared certainly to have been no delay on the part of either side. That it was prosecuted *bonâ fide*, and defended *bonâ fide*. That so long as that process was going on, so long as there were these allegations and counter allegations as to the right to revive and prosecute the decree, there was a pending proceeding and it would have been out of the power of the appellant to have done anything but wait for the result and the order of the Court upon that pending proceeding; and That the appellant having on the 20th November 1865, being within three years of the date of the last mentioned proceeding, applied for execution of the decree against the respondents, by the attachment and sale of certain scheduled property belonging to the estate of the judgment debtor, there had been a proceeding for enforcing the decree within three years, within the meaning of the 20th Section of Act 14 of 1859.—*Maharajah Dherraj Mahtab Chund Bahadoor* v. *Bulram Singh and another.* Vol. 13, p. 479.

The title of a judgment creditor, or a purchaser under a judgment decree, cannot be put on the same footing, as to limitation, as the title of a mortgagor, or of a person claiming under a voluntary alienation from the mortgagor.

The possession of a purchaser, under such circumstances, is really not the possession of a person holding in priority of the mortgagor, or holding so as to be an acknowledgment of the title of the mortgagee.

If the title of a mortgagee to enter by reason of default having occurred before, has accrued, and if a purchaser under such a title has been in possession for twelve years, believing himself to be *bonâ fide* owner, under a claim to the ownership of the property, and not being in possession in any way as mortgagor, or under the mortgagor, then a suit to disturb the possession of such a purchaser ought to be brought within twelve years after the commencement of his possession.—*Anundo Moyee Dossee and others* v. *Dhonendro Chunder Mookerjee and others.* Vol. 14, p. 101.

Suit to recover the sum of Rupees

16,051-11-10, alleged to be due in respect of various sales of cotton belonging to the plaintiff, and which the plaint alleged was sold by the defendant as a *del credere* agent; and as to which liability plaint set forth that there had been an adjustment of accounts. Defendant denied plaintiff's allegations as to there being any *del credere* contract with the plaintiff, or any adjustment of accounts. The plaintiff, on settlement of issues, abandoned the cause of action as upon an account stated, and sought adjustment of the accounts from the Court, and did not sue upon the account stated; whereupon, besides the pleas to the merits, the defendant pleaded limitation; it being admitted that the cause of action for the last item in the account had accrued more than three years, but, there were items in the account which had accrued within six years from the commencement of the suit. *Held*, that, the suit was a suit for breach of contract, and came within Clause 9 of Section 1 of Act 14 of 1859. —*Oukur Pershad Bustooree* v. *Mussumat Foolcoomaree Bebee.* Vol. 14, p. 134.

Plaintiffs were assignees of a mortgagee, originally a puisne mortgagee, but who had acquired the rights of the first mortgagee. Defendant was the purchaser from the assignee in Insolvency of a person who had purchased the property in question from the mortgagor. The original purchase from the mortgagor was upwards of twelve years from the commencement of the suit, followed by registration, and mutation of names in the Collector's book, and possession. At the time of the sale the property was subject to a mortgage, made in the form of the English mortgage, with the usual proviso for redemption, and a proviso that the mortgagor should continue in possession until default, and on default an express right of entry was given to the mortgagee; and more than twelve years before the commencement of this suit, such default was made. *Held*, that, plaintiff's suit was barred by limitation. That the right under the mortgage deed was to obtain possession of the land; and That the cause of action accrued when default was made.—*Brojonath Koondoo Chowdry and others* v. *Khelut Chunder Ghose.* Vol. 14, p. 144.

See ADVERSE POSSESSION,
DELHI, EX-KING OF,
DEMURRER,
DOWER,
EXECUTION,
INTEREST,
LA KHIRAJ LANDS,
MORTGAGE,
SOONDERBUNS.

LIMITATION, WORDS OF.

See ENCHANCEMENT OF RENT.

LIQUIDATORS, COMPROMISE BY.

See COMPROMISE.

LOAN.

See INCUMBRANCER,
MANAGER.

LOCAL ENQUIRY.

Where the question in the case related to the identification and boundaries of seven churs, or islands, of alluvial formation thrown up by the change of the course of the channel of a river; and the High Court of Calcutta had reversed the decree of the Court of First Instance, made after a careful local investigation. *Held*, that, the Court of the Judicial Committee of the Privy Council was unable to see any satisfactory grounds for the assumption, which was the foundation of the judgment of the High Court. That it would be very slow to interfere with the judgment of an Indian Court upon a question of this nature, but that here it had to deal with conflicting judgments, of which one was founded on a long and careful local investigation; and the other, overruling the former, was supported by no reasons that could be pronounced to be satisfactory. That the considerations which made the Judicial Committee of the Privy Council reluctant to set the Court's judgment against that of an Indian Court upon such a question as this, ought to influence in some degree the Appellate Court in India, and prevent its interference with the result of a local enquiry, except upon clearly defined and sufficient grounds. That such grounds the Appellate Court might have thought it had, but it had failed to express them; and That the reversal of the decree of the High Court would be

advised.—*Ranee Surut Soondree Debea* v. *Baboo Prosonno Coomar Tagore and another.* Vol. 13, p. 607.

See BOUNDARY SUIT.

LOCAL LAW.

See MERCANTILE USAGE.

LOCUS STANDI.

A Hindoo widow, as guardian of an infant, represented as the adopted son of her deceased husband, instituted a suit for the recovery of certain landed property from the respondent, and carried the suit in appeal to the Judicial Committee of the Privy Council. *Held*, that, the lady had not really such an interest in the appeal, or such a *locus standi*, as entitled her to insist that the appeal should go on, although the party, in whose name it was brought, had come of age, and wished to withdraw from it. That having incurred costs on behalf of the infant in the suit, she might have a claim to be recouped from his estate, if he had any; but, that that did not entitle her to prosecute the appeal in his name, against his will.—*Kanee Bistoopria Putmadaye* v. *Nund Dhul and others.* Vol. 13, p. 602.

See PRESUMPTIVE HEIR,
REVERSIONER,
SISTER'S SON.

LUNATIC.

It being admitted on both sides (the point not being argued, either before the Judicial Committee of the Privy Council, or in the Court below,) that, by the Hindoo Law, if a daughter was, when the succession was opened to her, that is to say, on the death of her mother, insane, she lost her right, (lunacy being a bar to succession,) and that it passed to three persons, who were mentioned in the record to be her sons. *Held*, that, the daughter was of unsound mind at the time of her mother's death.—*Baboo Bodhnarain Singh and others* v. *Baboo Oomrao Singh and others.* Vol. 13, p. 519. See also *Kooer Goolab Sing and others* v. *Rao Kurun Sing.* Vol. 14, p. 176.

See LIMITATION.

MACHINERY.

See RATING.

MADRAS.

See REGULATIONS.

MADRAS CIVIL SERVICE ANNUITY FUND.

See ANNUITY.

MAHOMEDAN.

See BENAMEE,
LEGITIMACY,
NATIVE CHRISTIANS,
RESTITUTION OF CONJUGAL RIGHTS,
SUICIDE.

MAHOMEDAN LAW.

The terms of a Firman declaring that the general superintendence of the resources of the property should be confided to a person named, and should remain vested in him, his heirs and successors, for pious and charitable purposes, is sufficient to constitute *Wukf*, without the express use of that term; and the alienation of such property from the purposes intended is illegal.

Notwithstanding the use of the words *Inam*, and *Altamgha* in the Royal grants, and the mention therein of the persons upon whose petition the grants were made, yet as the grants appeared clearly to have been made, (as expressed in the petitions,) for the purpose of maintaining a charitable institution, the persons named were not to be considered proprietors, as the institution mentioned was the real donee, and the persons named were only *Mutwalies* of the same.

A *Mutwaly* has no right to alienate; and a transfer by gift or otherwise by him is illegal.

The endowment in the case before the Court being a perpetual endowment, the duty of the Government to preserve its application to the right use was a public and perpetual duty; and a person wrongfully in possession could acquire no right against the Government, whose procurator the plaintiff was, until 12 years had elapsed from his appointment.—*Jewun Doss Sahoo* v. *Shah Kubeer-ood-deen.* Vol. 2, p. 390.

By Bengal Regulation No. IV of 1793, Section 15, it is provided, "that in "suits regarding succession, inherit- "ance, marriage, and caste, and all "religious usages and institutions, "Mahomedan Laws with respect to "Mahomedans, and Hindoo Laws with "regard to Hindoos, are to be con- "sidered as the general rules by which "the Judges are to form their deci- "sions." According to the true construction of this regulation, in the absence of any judicial decisions, or established practice, limiting or controlling its meaning, the Mahomedan Law of succession applicable to each sect ought to prevail, as to litigants of that sect. It is not said that one uniform law should be adopted in all cases affecting Mahomedans, but, that the Mahomedan Law, whatever it is, shall be adopted. If each sect has its own rule, according to the Mahomedan Law, that rule should be followed with respect to litigants of that sect. Such is the natural construction of this regulation, and it accords with the just and equitable principle upon which it was founded, and gives effect to the usages of each religion, which it was evidently its object to preserve unchanged. As to judicial decision there is none; nor is any course of practice to be found with respect to all Mahomedan successions at variance with this construction. It is true that the *Soonee* Law has generally prevailed, because the great majority of the Indian Mahomedans are *Soonees*, there being very few families of the *Sheeah* sect, except those of the reigning princes, which would account for the prevalence of the *Soonee* doctrines in the Courts, but there is no practice which excludes the application of the *Sheeah* Law to the rights of persons professing the tenets of that sect, and the natural and equitable construction of the regulations must prevail.

According to the law of the *Sheeah* sect, a brother of a deceased person held to have no right or title as heir to a moiety of a Zemindary left by his deceased brother, the latter having left a widow and daughters.—*Rajah Deedar Hossein* v. *Ranee Zuhoor-oon-nissa.* Vol. 2, p. 441.

Decree of the Lower Court upheld, whereby it gave to the two daughters of a Mahomedan female three-fourths of the estate of their deceased mother, derived by her from her mother, and awarded one-fourth of such estate to their father, her husband.—*Kadir Buksh Khán* v. *Mussumatain Fusseeh-oon-nissa and another.* Vol. 5, p. 413.

See CHILDREN,
CONVERTS,
DIVORCE,
DOWER,
GIFT INTER VIVOS,
HUSBAND AND WIFE,
LEGITIMACY,
LIEN,
MARRIAGE,
MORTGAGE,
NATIVE CHRISTIANS,
RESTITUTION OF CONJUGAL RIGHTS,
SUICIDE,
WIDOW,
WILL.

MAINTENANCE.

An alienation of a portion of a Zemindary held to be for maintenance only, and not absolutely.—*Anund Lal Sing Deo* v. *Maharaja Dheraj Gurrood Naryun Deo Bahadur.* Vol 5, p. 82.

Where the question was, whether land dedicated permanently to maintenance of a particular class, was to remain inalienable in the hands of the person to whom the grant was made, and his descendants, as long as there should be descendants of his, for ever, so as to prevent a sale, and to render it perpetually inalienable; The Court, without intimating any opinion whether that was the law governing landed property of the description in question, or not, considered that the case was not one of that description; and that there could not be collected from the instrument an intention that from son to son, it should remain in the family: with the head of the family for the time being, in order to enable him to afford the maintenance. The Court was further of opinion that giving the land to a member of the family, to whom it was given, had the same effect, and was an act of the same character as giving a sum of money to him absolutely, in lieu of any claim for maintenance burdened with the duty upon his part of maintaining those who ought to be maintained.

And that if that had been done, the money would have been absolutely the property of the person to whom it was given, and that would have well discharged the duty incumbent upon the person who should have paid the same.—*Rajah Nursing Deb* v. *Roy Koylasnath and others.* Vol. 9, p. 55.

The Sudder Court at Agra having decreed that a widow was entitled to maintenance at the rate of Rupees 125 per month, and that Rupees 15,000 be set aside out of the devisable assets to provide for it. *Held*, that, an English Court of Equity, if administering the whole estate, would have carried over the sum set apart for this purpose to a separate account, and would have directed that the annual income should be paid to the widow during her life, and that the parties having a reversionary interest in the principal, should be at liberty to apply concerning it on her death; but, that as the Country Courts in India had no machinery which enabled them to take any such course, and, as the suit was not one for general administration of the estate, the Court of the Judicial Committee of the Privy Council declined to alter the course which the Court below took, *viz.*, to deduct from the gross amount of divisible assets the sum of Rupees 15,000, which at ten per cent. would produce the annual sum of Rupees 1,500, and to leave it as residue undivided in the hands of one of the parties to the suit, in which it was found, subject to the obligation of paying the maintenance; but directed that a declaration should be added to the decree, to the effect, that it should be without prejudice to the right of the plaintiff, or of his representatives, to claim on the death of the widow, such share as he or they might be entitled to in the sum of Rupees 15,000, retained to provide for her maintenance.—*Rampershad Tewarry* v. *Sheochurn Doss and others; Sheochurn Doss* v. *Rampershad Tewarry*; *Mussumat Thookra* v. *Rampershad Tewarry.* Vol. 10, p. 490.

In a suit brought by the respondent, claiming to be the illegitimate son of a former Zemindar of *Yetteyapooram*, a Hindoo of the *Soodra* caste, by a dancing girl, the concubine of the Zemindar, against the appellant, the then Zemindar, for maintenance out of the income of the Zemindary. *Held*, that, if it were established that the respondent was the natural son of this Hindoo father, and recognized by him as such, it was not essential to his title to maintenance that he should be shown to have been born in the house of his father, or of a concubine possessing a peculiar *status* therein. That the cause should be remitted to India with a declaration of the respondent's *status* as an illegitimate son of the former Zemindar, and of his consequent right to maintenance; and That it would be for the High Court of Madras to determine whether the decree should be varied by directing the maintenance to be paid out of the income of the Zemindary, or whether it should direct any further enquiry whether there was any other property upon which it could be charged.—*Muttusawmy Jagavera Yettappa Naicker* v. *Vencataswara Yettaya.* Vol. 12, p. 203.

The *quantum* of maintenance is a question with which the Courts of India having local knowledge, and being conversant with the habits of native families, are peculiarly competent to deal with; and strong grounds should be shown to justify any interference by the Judicial Committee of the Privy Council with their discretion in that matter.—*Ranee Parvata Vardani Nachear* v. *Anandai and another.* Vol. 12, p. 397.

With respect to residence of a party entitled to maintenance, it is a matter for the discretion of the Judge, and a matter with which the Judicial Committee of the Privy Council will be very reluctant to interfere, unless it can be shown that the Court below has miscarried in some very gross and striking manner.—*Katchekaleyana Rungappa Kalakka Tola Oodiar* v. *Kachivijaya Rungappa Kalakka Tola Oodiar.* Vol. 12, p. 495.

See BABOOANA,
CHAMPERTY,
CONFISCATION,
DIVORCE,
GIFT OVER,
JOINT UNDIVIDED HINDOO FAMILY,
KHATRI CASTE,
MALIKANA,
MARRIAGE,
POLLIAM TENURE,
RAJ.

MALAVAR.

See MARRIAGE.

MÂL LANDS.

See EVIDENCE.

MÂL SURUNJAMEE LANDS.

See CHAKERAN LANDS.

MALICE.

See TORT.

MALIKANA.

Malikana is the allowance made to the Zemindar for his maintenance; and the disbursements and outgoings allowed to him against his receipts fall under the name of *Kurcha.—Raja Lelanund Sing Bahadoor* v. *The Bengal Government.* Vol. 6, p. 101.

MANAGER.

The power of a Manager for an infant heir to charge an estate not his own, is, under Hindoo Law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of an estate.

But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the *bonâ fide* lender is not affected by the precedent mismanagement of the estate.

The actual pressure on the estate, the danger to be averted, or the benefit to be conferred on it, in the particular instance, is the thing to be regarded.

But if that danger arises, or has arisen, from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong, to support a charge in his own favor against the heir, grounded on a necessity which his wrong has helped to cause.

A lender is bound to enquire into the necessity for a loan, and to satisfy himself, as well as he can, with reference to the parties with whom he is dealing, that the Manager is acting in the particular instance for the benefit of the estate.

But, if he does so enquire, and acts honestly, the real existence of an alleged sufficient, and reasonably credited necessity, is not a condition precedent to the validity of his charge, and, under such circumstances, he is not bound to see to the application of the money.

The mere creation of a charge securing a proper debt cannot be viewed as improvident management.

A *bonâ fide* creditor should not suffer when he has acted honestly, and with due caution, but is himself deceived.—*Hunooman Persaud Panday* v. *Mussumat Babooee Munraj Koonweree.* Vol. 6, p. 393.

See CONSTRUCTION,
EVIDENCE,
INCUMBRANCER,
MORTGAGE.

MANUFACTORY.

See RATING.

MARINE INSURANCE.

See TIME POLICY.

MARITAL RIGHTS.

See RESTITUTION OF CONJUGAL RIGHTS.

MARKET VALUE OF PROPERTY.

See SPECIAL LEAVE TO APPEAL.

MARRIAGE.

In considering, whether, a woman once a concubine, and admittedly formerly a prostitute, has, by judicial presumption, been converted into a wife, merely by lapse of time and propriety of conduct, and the enjoyment of confidence with powers of management reposed in her, the ordinary legal presumption is, that things remain in their original state.—*Mussumat Jariut Ool Butool* v. *Mussumat Hoseinee Begum.* Vol. 11, p. 194.

When once a marriage in fact is proved, there will be a presumption in favor of there being a marriage in law.

All parties being of the *Soodra* caste, the proposition, that because the father of the bride was illegitimate, therefore,

the child of that father could not contract a valid marriage, and was in substance of no caste at all, cannot be supported.

In the *Soodra* caste, illegitimate children may inherit, and have a right to maintenance.

All that was alleged really being, that the husband was of one part of the *Soodra* caste, and the wife of another part, or of a sub-caste, the marriage was held to be valid.—*Inderun Valungypooly Taver* v. *Ramasawmy Pandia Talaver and another.* Vol. 13, p. 141.

Marriage of a Zemindar of an inferior *Soodra* caste, that of *Malavars*, with a woman of the *Vellala*, one of the subdivisions of the *Soodra* caste, upheld.

A marriage *de facto* being established, and supported by recognition by the deceased Zemindar of the children of the marriage as legitimate, the very strongest evidence will be required to show that the law denied to such children their presumable legal *status* on the ground of their mothers' incapacity to contract a marriage.—*Ramamani Ammal* v. *Kulanthai Natchear and others.* Vol. 14, p. 346.

See DIVORCE,
DOWER,
LEGITIMACY,
PRIMOGENITURE,
RESTITUTION OF CONJUGAL RIGHTS,
WIDOW.

MARRIED WOMAN.

See DOWER.

MASTER IN EQUITY.

An order of the Supreme Court of Madras dismissing a person from his office of Master of that Court, for alleged official misconduct, *Held*, not to be an appealable order made in the course of a judicial proceeding.

The Judicial Committee of the Privy Council, however, upon the petition of the dismissed Master, reported to Her Majesty, as their opinion, that leave ought to be granted him to enter and prosecute the appeal from the order, the same not being an appealable order under the ordinary provisions for appeal.

It was further recommended that the appeal should come on for hearing upon the petition of appeal and the printed case already lodged on behalf of the petitioner, and that the appeal should be allowed to stand in the same plight and condition as if the same had not been irregular.

Upon the merits, it was recommended to Her Majesty that the order appealed from ought to be reversed.—*In re Minchin.* Vol. 4, p. 220.

MEASURE OF DAMAGES.

See LEASE,
MESNE PROFITS.

MERCANTILE CONTRACTS.

See BOUGHT AND SOLD NOTES.

MERCANTILE USAGE.

To support such a ground as Mercantile usage, there needs not either the antiquity, the uniformity, or the notoriety of custom, which, in respect of all these, becomes a local law.

The usage may be still in course of growth; it may require evidence for its support in each case; but, in the result, it is enough if it appear to be so well known and acquiesced in that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract—*Juggomohun Ghose* v. *Manickchund and another.* Vol. 7, p. 263.

See BOUGHT AND SOLD NOTES.

MESNE PROFITS.

The evidence in a suit not satisfactorily proving what the value of the mesne profits were, and the Court below having awarded profits at a rate calculated upon the amount at which the defendant had rated the same in a former suit, the decree was upheld.—*Sooriah Row* v. *Rajah Enoogunty Sooriah.* Vol. 2, p. 72.

Court restrained from giving more than the amount laid in the original plaint, although a greater amount was proved.—*Sooriah Row* v. *Cotaghery Boochiah.* Vol. 2, p. 113.

The mode of taking accounts accord-

ing to a scale admitted by the appellant's vakeel, there being no reason to doubt that he had the authority of his client; confirmed on appeal.—*Rajunder Narain Rae and another* v. *Bijai Govind Sing*. Vol. 2, p. 253.

Taking into consideration, amongst other things, the great length of time that had elapsed whilst certain prior suits, relating to the property in respect of which the present claim arose, were pending, and the enormous expense occasioned by them, mesne profits allowed from the time of the institution of the suit only.—*Rajah Enayet Hossein* v. *Sayud Ahmed Reza and another*. Vol. 7, p. 238.

The appellant originally sued to recover from the respondent certain villages and lands, and claimed also mesne profits. The suit was dismissed by the Court of First Instance and that dismissal was confirmed on appeal. On appeal to the Judicial Committee of the Privy Council their lordships thought that the dismissal was wrong, and in an ordinary suit they would have made the final decree which the Appellate Court in India ought to have made; but, not having materials for doing this, they recommended an order in Council declaring the appellant absolutely entitled to certain villages and lands, and directing certain enquiries to be made. The appellant applied to the High Court of Calcutta for the execution of part of the decree, relating to two villages to which his title had been declared, and the single Judge of the High Court on whom devolved the duty of answering the application, was willing to execute, and proceeded to execute the decree, so far as related to possession of these two villages, but stated his opinion to be, that with regard to mesne profits, inasmuch as the order of Her Majesty in Council had not specifically mentioned anything about mesne profits, it would not be proper for the Court in India, in executing a decree, to make any order with regard to the mesne profits. *Held*, that, the right to mesne profits was consequential on the declaration in the order in Council, and upon possession; but that, as the difficulty had arisen, partly by the application of the appellant to execute the decree piecemeal, and partly by the erroneous apprehension which the Court appeared to have entertained of the judgment of the Judicial Committee of the Privy Council, there ought to be no costs of the appeal.—*Rajah Lelanund Singh* v. *Maharajah Luckmissur Singh Bahadoor*. Vol. 13, p. 490.

See EVIDENCE,
WASILAT.

METES AND BOUNDS.

See JOINT UNDIVIDED HINDOO FAMILY.

MINORS.

The Supreme Court of Madras under the general jurisdiction of the Court to regulate its practice, and not under the powers given by Statute 2 and 3, Vic. Cap. 34, having promulgated, amongst others, a rule to the effect, that, "Whenever it shall appear that the "property of any infant is unprotected, "and not secured for his or her benefit, "the Registrar shall, with the previous "consent of the Court, or a Judge, "institute proceedings on behalf of "such infant, for the purpose of pro-"tecting his or her person or pro-"perty;" and that Court, upon the petition of the Registrar of the Court, having passed an order by which was given the consent of the Court to the institution, by him as next friend, of a suit in Chancery against the appellant, the administratrix of her deceased husband, on behalf of the infant children of the appellant. *Held*, that, on general principles the order ought to be reversed. That whatever might be the propriety of making provision, by the appointment of a public officer, for the institution of suits on behalf of infants, it was of the utmost importance that no person should be appointed for that purpose, of whom even a suspicion could exist that he might be biassed by any personal interest, either in the institution of the suit, or in the mode of conducting it; and, it appearing that the Registrar, by reason of the office he held, would both receive fees upon the different proceedings in the cause, and a commission upon any monies paid into Court, that it was plain that he had a strong personal interest, both in the institution of suits, and in the mode of conducting them, and especially in one of the most delicate points upon which a next friend could be required to exercise a discretion, *viz.*, the propriety or im-

propriety of requiring the payment of money, or transfer of funds into Court.

It is of great consequence in all countries, and more particularly in a country like India, that no officer of a Court of Justice should be even exposed to the suspicion, that, in the discharge of his official duties, his conduct may be influenced by any personal consideration.—*Kerakoose* v. *Serle and others.* Vol. 3, p. 329.

A suit being brought against the appellant, a Zemindar, and his adoptive mother, to recover the principal and interest due upon a Bond executed by the adoptive mother during the minority of the appellant; the inference drawn from the evidence by the Lower Courts, that, the Bond was given for debts which the appellant as owner of the Zemindary might be liable to pay, and that by his own act he had admitted that he was actually liable to the payment, upheld. —*Chetty Colum Comara Vencatachella Reddyer* v. *Rajah Rungasawmy Streemunth Iyengar Bahadoor.* Vol. 8, p. 319.

The appellant carried on business as a Banker, and, in that character, alleged, that she had made large payments for the respondents, during the time that they, or some of them, were minors, in respect of revenue due to Government from a Zemindary belonging to them, these advances being said to have been made at the instance of a person who was the guardian of the infants, and executor and trustee under the Will of their father, and for which sums, it was further alleged, the respondents on taking possession of their Zemindary had given a *Kistbundy*, or engagement to pay the amount by instalments; and for one of the instalments so secured the suit under appeal was brought. *Held*, that under the circumstances, the respondents could not be permitted, after the death of the guardian, to dispute their liability for payment of the debt which they had, the Court considered, deliberately undertaken to pay; and, that, whatever suspicion might attach to the dealings between the appellant and the executor, it could not affect the decision of the suit; although it was very possible that if the respondents had instituted a suit to take the accounts of the guardian, charging collusion between him and the appellant, and had investigated the transactions which had taken place, it might have appeared that there was no such sum, as was claimed by the appellant, justly due to her.—*Golaub Koonwurree Bebee* v. *Eshan Chunder Chowdhooree and others.* Vol. 8, p. 447.

The power of the Manager for an infant heir to charge an estate not his own, is, under Hindoo Law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded. The lender is bound to enquire into the necessity for the loan, and to satisfy himself, as well as he can, with reference to the parties with whom he is dealing, that the Manager is acting in the particular instance for the benefit of the estate.—*Hunooman Persaud Panday* v. *Mussumat Babooee Munraj Koonweree.* Vol. 6, p. 393. See also *Lalla Bunseedhur* v. *Koonwur Bindeseree Dutt Singh.* Vol. 10, p. 454.

He who sets up a charge upon a minor's estate, created in his favor by the guardian, is bound to show, at least, that when the charge was so created, there were reasonable grounds for believing that the transaction was for the benefit of the estate.

The Court being of opinion, that there was no proof of necessity; that the appellant had wholly failed to relieve himself of the burden which the law casts upon him of showing that he had good grounds for supposing that the transaction was for the benefit of the estate; and that the Courts below were warranted in imputing the character of fraudulent contrivance, to the transaction; sustained the decree of the Lower Court, deciding that possession of the property should be restored to the respondent, who had been deprived thereof by a judicial sale under a decree obtained upon a deed of agreement, executed by his step-mother as his guardian during his minority, charging his estate.—*Lalla Bunseedhur* v. *Koonwur Bindeseree Dutt Singh.* Vol. 10, p. 454.

See GUARDIAN AND WARD,
INFANT,
LEASE,
LIMITATION,
LOCUS STANDI,
MANAGER.

MINORITY.

See LIMITATION.

MIRASI RIGHTS.

In a suit for specific performance of an agreement alleged to have been entered into by the East India Company, to pay the Mirasidars of certain villages, compensation for the loss of their Mirasi rights, in a certain tract of land outside of Black Town, Madras, which had been taken possession of by the Government of Madras, for the purpose of forming an esplanade for the Military defence of that quarter, the plaintiff being an executor, and claiming compensation for certain shares in the Mirasi rights which his testator had purchased from some of the Mirasidars. *Held*, that, there being no evidence of any such agreement having been made, and the whole equity being founded on it, the bill should be dismissed with costs.—*East India Company* v. *Nuthumbadoo Veerasawmy Moodelly*. Vol. 5, p. 217.

MISCONDUCT.

See WIDOW.

MISDEMEANOUR.

See JURISDICTION.

MISJOINDER.

See PRACTICE.

MISPLEADING.

See PRACTICE.

MISTAKE.

See PRACTICE.

MITHILA LAW.

See CUSTOM,
HINDOO LAW,
SISTER'S SON.

MOCURRERY.

Although *Mocurrery* may import *perpetuity*, this is not the necessary meaning of the word; and, as used in the documents in the case before it, the Court was satisfied that it had not that import.—*The Bengal Government* v. *Nawab Jafur Hossein Khan*. Vol. 5, p. 467.

MOHUNT.

Upon the questions arising under the Will of one *Gopaul Doss*, Mohunt of the *Akra*, a religious institution, wealthily endowed, at Rajgunge in the Zillah of Burdwan; *viz.* 1, whether there was an absolute gift of the Mohuntship to the appellant *Greedharee Doss*, as soon as he became competent to perform the duties, or whether the gift was in reversion after the incapacity of one *Ladlee Doss*; and 2, whether, if the Will contained such a gift, there existed such an authority within the power of a Mohunt as to enable him to make such a gift. *Held*, that, upon the true construction of the Will, it did not give the appellant an absolute, positive, unqualified right at any time to the Mohuntship; and that untill *Ladlee Doss* became incapable no trust or duty was suggested, and that even when he became incapable, it could not be put higher than a gift in the nature of a precatory trust,—that is, one requesting *Ladlee Doss* to perform the wishes of the testator, and to appoint the appellant, his successor, provided he found that the incapacity which existed in the appellant at the time of the making of the Will, (he not being then of sufficient age to be appointed Mohunt,) should have ceased to exist at the time when *Ladlee Doss* was unable to perform those duties—That, under these circumstances, it was unnecessary to consider the second question; and That, from the way the suit was framed, the appellant to succeed in the case, must succeed by the force of his own title, and not by the infirmity of the respondent's title.—*Greedharee Doss* v. *Nundokissore Doss, Mohunt*. Vol. 11, p. 405.

MONEY RECEIVED UNDER JUDGMENT OR DECREE.

RECOVERY, BACK OF.

See CAUSE OF ACTION.

MOONSIFF.

Upon an *ex parte* application for special leave to appeal from an Order of the High Court of Calcutta, made under Bengal Regulation No. V of 1831, Section 26, dismissing the petitioner from

his office of Moonsiff, for corruption in the exercise of his judicial functions as Moonsiff. *Held*, that, the office of Moonsiff was not a Patent office within the meaning of 22, Geo. 3, Cap. 75.

Ex parte Robertson (XI, Moore's Privy Council Cases, p. 288,) is an express authority that the Judicial Committee of the Privy Council has no jurisdiction to entertain such an application.—*In re Sree Mohun Ghutuck.* Vol. 13, p. 343.

MORTGAGE.

A mortgage of the revenues of a village belonging to a firm, to secure advances made for the purpose of paying the co-partnership debts of that firm, executed by two of the co-partners of the firm, and of the execution of which a third co-partner was cognizant, though he did not actually execute the same. *Held*, to be binding on such third co-partner, and to constitute him a mortgagor.

A mortgage deed contained a stipulation that the mortgagee should station a clerk of his own in the mortgaged village, for the purpose of making the collections; the mortgagors agreeing to give him a monthly stipend and his food, so long as the property remained under mortgage and they could afford to do so; and a clerk was appointed, paid by the mortgagors, who might have received the rents and profits of the village, and who probably did so for a year or two, but subsequently permitted the mortgagors to take them for four or five years. Upon consideration of the question in what way the mortgagee's rights were affected by this conduct; and whether, as to a person who had attached the property in execution of decree, the mortgagee might not be considered as having forfeited his right to payment, in consequence of having allowed the mortgagors themselves to take possession of the rents and profits during some of the years in which the clerk was in possession. *Held*, that, this stipulation was merely a power to the mortgagee to satisfy himself, just as an English mortgagee might, by taking possession of the rents and profits of the estate, which English mortgagee choosing to forego the benefit of receiving the rents and profits, and permitting the mortgagor to take them would be in no way affected, as between himself and the mortgagor, but would have a full right to recover his debt by reason of the mortgage; the only effect being that when some subsequent incumbrancer came in, and he had notice of that claim, that, by the rule and law of England, if, after notice, he permitted the mortgagor to receive the rents and profits, he exposed himself to the claim of the second incumbrancer; which principle the Judicial Committee of the Privy Council thought ought to be applied to the present case.—*Juggeewundas Keeka Shah* v. *Ramdas Brij Bookundas.* Vol. 2, p. 487.

The respondent, representing a mortgagee, pursuant to Bengal Regulation No. XVII of 1806, presented a petition to the Civil Court where the mortgaged property was partly situate, a portion being in another district, for an order of foreclosure to be issued against the appellant, the widow of the mortgagor, and one *Ooday Churn*, the guardian and manager of the estate under the Court of Wards, the widow being a minor, and there being an adopted son of the late mortgagor, also a minor, under the guardianship of the widow, and the guardian and manager *Ooday Churn* being then in possession of the mortgaged estate, and an order of foreclosure was granted, and served on the appellant and on *Ooday Churn*, but not on the adopted son. The respondent subsequently brought a suit for foreclosure in the Zillah Court of the same district. *Held*, that, the mortgaged land being situate partly in the one district and partly in the other, there was nothing to show that an order made in the Court of either district would not be a proper order. That service of the notice of foreclosure upon the widow of the deceased mortgagor, the adopted son being a minor under her guardianship, was quite sufficient.—*Ras Muni Dibiah* v. *Prankishen Das.* Vol. 4, p. 392.

A decree in plaintiff's favor in a suit, instituted by him as respresenting a mortgagee of certain landed property, against the mortgagor, for recovery of the principal sum and interest advanced upon a mortgage, brought before the expiration of the period for which the same was lent, on account of the mortgagor having refused to carry out the terms of the mortgage deed, by delivery to the mortgagee of possession

of the mortgaged premises, confirmed upon appeal, notwithstanding the defendant's plea, amongst others, that the plaintiff, if entitled, ought to have sued for possession of the estate conveyed by the mortgage.—*Raja Oodit Purkash Sing* v. *Martindell and another.* Vol. 4, p. 444.

The Court of First Instance having held that the dealings with certain real estate, a conveyance of which had been made in fee, by way of lease and release, constituted a mortgage transaction, and not an absolute and unconditional sale. The Judicial Committee of the Privy Council upon appeal confirmed such decision of the Lower Court. —*Muttyloll Seal* v. *Annundochunder Sandle and another.* Vol. 5, p. 72.

Plaintiff's testator having an equitable mortgage on certain villages, of which the title was in one *Gholam Ahmed*, a suit was instituted against the mortgagor to recover the amount of his demand, for which a decree was eventually obtained. Pending the suit, and while *Gholam Ahmed*, the representative of the mortgagor, was a party to it, the Collector of Benares sold the property at auction in satisfaction of a decree against *Gholam Ahmed*, as a defaulting farming lessee, as if it were *Gholam Ahmed's* unincumbered estate, suppressing all mention of the mortgage, of which he had notice. A suit being brought by the plaintiff, as representing the testator, the mortgagee, to recover the amount which had been realized by the sale. *Held*, that, the Government officer having notice of an incumbrance, which was only an equitable charge on the property, having suppressed all mention of it in the advertisement of sale and conveyed away the estate to the purchasers as unincumbered, and received the full value, as if it were free from mortgage, the amount received by the Collector from the sale, with interest, should be applied, as far as the same would extend, in payment of the plaintiff's demand.—*Douglas* v. *The Collector of Benares.* Vol. 5, p. 271.

In a suit in which the enforcement was asked of a mortgage executed by a manager during the infancy of the heir, part of the consideration for which appeared to be ancestral debts, the Judicial Committee of the Privy Council were of opinion, that, assuming the mortgage Bond to be invalid and ineffectual, the mortgagee would, nevertheless, be entitled to the benefit of any prior mortgage or mortgages paid off by him, and affecting the property comprised in the Bond, if, and in so far as such prior mortgage or mortgages was or were valid and effectual.

Observations made as to the mode of taking accounts.—*Hunooman Persaud Panday* v. *Mussumat Babooee Munraj Koonweree.* Vol. 6, p. 393.

In a suit to recover possession of a house and lands under a foreclosure of a mortgage of the same of the class termed *Bye bil wuffa*, or *Kut Kubala*, to perfect in the plaintiff the proprietory right to the lands free from redemption; the defence being, amongst other things, that the claim to possession was barred by limitation, and the right to foreclosure defeated by a due deposit of the mortgage money under the regulations then in force. *Held*, that, it could not be laid down, as a rule, universally true, that, under Bengal Regulation No. III of 1793, Section 14, a mortgagee's proceeding for a foreclosure under a mortgage of the class of *Bye bil wuffa* simply, could not be preferred after twelve years from the expiration of the time which the instrument fixed as the period of redemption by payment, and on the expiration of which the conditional sale would become absolute; for this indiscriminating ground of decision would include alike adverse occupations, and those which had not the semblance even of such a character, and would establish a bar arising from simple occupation, and not from the laches of the demandant or of others before him. That these instruments of conditional sale have now an operation different from that which they originally had, and were mortgages redeemable like ordinary mortgages, and subject to foreclosure. That the possession of those who claim under the mortgagor, so long as they assert a title to redeem, and advance no title inconsistent with it, must, *primâ facie* at least, be treated as perfectly reconcileable with, and not adverse to, the title of the mortgagee, and the continuation of his lien on the thing pledged. That it is by no means the essence of such a title in India, any more than it is in England, that it should be accompanied by an actual continuing posses-

sion of the lands; as the pledgee may, from various causes, be reluctant to assume possession of the pledge, or to shorten the period of its redeemable character. That in the present case no evidence could be found, nor anything to support an inference, that the once undoubted right of the mortgagee to enforce possession was at an end, or barred, or incomplete. That mere words in the form of a protest, which may accompany a tender, will not defeat it, where they can reasonably be regarded as idle words. That the money tendered in this suit must be considered as tendered by one who had no right to redeem, and that the service of a notice of foreclosure on him raised no case of estoppel. That, when the object of a party was to foreclose a mortgage, he must effect that object in the mode prescribed by Bengal Regulation No. III of 1793, Section 14; Regulation No. II of 1805, Section 3; and Regulation No. XVII of 1806, Sections 7 and 8, or the foreclosure would not be regular.—*Prannath Roy Chowdhry* v. *Rookeea Begum and others.* Vol. 7, p. 323.

Upon an appeal from a decree of the Sudder Dewanny Adawlut at Calcutta, in a suit by the appellant, a purchaser at a sale under a decree, of the mortgagor's equity of redemption in certain lands, for possession thereof, upon an allegation that the respondents, as the usufructuary mortgagees, had repaid themselves the principal money and interest due to them, out of the mesne profits of the property; and in which the respondents pleaded, that, by certain foreclosure proceedings taken by them under Bengal Regulation No. XVII of 1806, the equity of redemption was barred. *Held*, that, there had been no such trial of the question of foreclosure as the regulation which prescribed the statement of formal issues,—Bengal Regulation No. XXVI of 1814—and substantial justice, required; and the case was remitted to India for further trial; with a direction for the taking an account of the mesne profits received by the mortgagees in possession, in case it should be found that the appellant's right, or equity of redemption in the mortgaged premises had not been barred or foreclosed.

If a sale takes place before a notice of foreclosure is filed, that notice, to be effectual, must be served on the purchaser; and where, before the filing of a notice of foreclosure, the mortgagees have notice that the interest of the original mortgagor has been taken in execution, notice of foreclosure ought to be served upon the decree-holder.—*Mohun Lall Sookool* v. *Goluck Chunder Dutt and others.* Vol. 10, p. 1.

The functions of the Judge under Bengal Regulation No. XVII of 1806, Section 8, are purely ministerial, and a mortgagee after having done all that this regulation requires to be done in order to foreclose a mortgage, and make a conditional sale absolute, must bring a regular suit to recover possession, if he is out of possession, or to obtain a declaration of his absolute title, if he is in possession.

In that suit, the mortgagor may contest, on any sufficient grounds, the validity of the conditional sale, or the regularity of the proceedings taken under the regulation in order to make it absolute. He may also allege and prove if he can, that, nothing is due, or that the deposit, if any, which he has made, is sufficient to cover what is due; but the issue, in so far as the right of redemption is concerned, will be, whether anything, at the end of the year of grace, remained due to the mortgagee, and, if so, whether the necessary deposit had then been made. If that be found against the mortgagor, the right of redemption is gone.

Held, that, the Court below was in error in the dismissal of a foreclosure suit, for non-production of accounts by the mortgagee, in a suit in which there was neither plea nor proof, that, the usufruct had liquidated the principal and interest, and where no deposit had been made to cover the balance admitted to be due.

The necessity for an account arises, and need only arise:

First, when the mortgagor has deposited the principal, leaving the question of interest to be settled on an adjustment of the accounts; Secondly, when he has deposited all that he admits or alleges to be due; or, Thirdly, when he pleads, and undertakes to prove, that the whole of the principal and interest has been liquidated by the usufruct of the property.

Up to the year 1806, the rights of the holder of a *Bye bil wuffa* were enforce-

able according to the strict terms of the contract. It was necessary for the mortgagor, if he wished to save his estate from forfeiture, to tender the amount due, or to pay it into Court, pursuant to the provisions of Bengal Regulation No. I of 1798, within the stipulated period for the re-payment of the loan. Bengal Regulation No. XVII of 1806, first introduced a modification of the strict rights given by the contract, analogous to, though by no means identical with that which Courts of Equity in England have long imposed on mortgages in that country. The 7th Section of that regulation extended the period within which the mortgagor might redeem, to any time within one year from and after the application of the mortgagee to the Zillah Court under Section 8 for foreclosure.

The Law of Foreclosure, as established by the regulations, and the practice of the Courts in Bengal, considered.—*Forbes* v. *Ameeroonissa Begum*. Vol. 10, p. 340.

A lease for twenty years, a mortgage deed pledging the same property, also for twenty years, and reserving interest at nine per cent. and an agreement executed by the mortgagors to the lessee. *Held*, to constitute one mortgage security, and to have been entered into with a view to evade the usury laws, by a device or mean within the meaning of the 9th Section of Bengal Regulation XV of 1793; and that the mortgagors were entitled to redeem at any time, though before the expiration of the term of twenty years created by the lease, on payment or satisfaction of all that might be due on the mortgage securities, for principal money, interest, and costs, such interest to be calculated at twelve per cent. Also, that, the plaintiff having failed to prove that the mortgage debt, with interest, and costs, had been satisfied at the time of the institution of the suit for redemption, the suit should be dismissed.

A question as to interest held open upon appeal, though the plaintiff might have appealed, and did not, from an interlocutory decree on the point.

The rules of evidence, and the law of estoppel, forbid any addition to, or variation from, deeds or written contracts. The law, however, furnishes exceptions to its own salutary protection; one of which is, when one party, for the advancement of justice, is permitted to remove the blind which hides the real transaction; as, for instance, in cases of fraud, illegality, and redemption. In such cases the maxim applies, that, a man cannot both affirm and disaffirm the same transaction, show its true nature for his own relief, and insist on its apparent character to prejudice his adversary. This principle, so just and reasonable in itself, and often expressed in the terms that you cannot both approbate and reprobate the same transaction, has been applied by the Judicial Committee of the Privy Council to the consideration of Indian Appeals, as one applicable also in the Courts of that country, which are to administer justice according to equity and good conscience. *Held*, therefore, that the bargain disclosed should be performed, so far as the law allowed; in other words, that twelve per cent. interest was, in this instance, the interest to be computed.

The suit being brought to establish the title to redeem, for cancellation of the instruments, for possession of the lands and payment of a small estimated surplus, it lay upon the plaintiff to show that the mortgagees had been paid in full out of their receipts.

A mortgagee is not an assurer of the continuation of the same rate of profit which his mortgagor was able to raise. —*Shah Mukhun Lall and others* v. *Baboo Sree Kishen Singh and others*. Vol. 12, p. 157.

As to a person not being allowed to approbate and reprobate the same transaction, see also *Forbes* v. *Ameeroonissa Begum*. Vol. 10, p. 356.

In a suit brought by the purchasers of the equity of redemption of the mortgagor in a certain village, against the appellant, the mortgagee, and others the purchasers of the same mortgagor's interest in certain other villages, all of which, and certain others purchased by the appellant, were comprised in the same mortgage deed, and in which suit the appellant contended that the whole proprietary right and interest of the mortgagor had vested in him; such purchasers were allowed to redeem and recover possession of their village, on payment of the proportion of the mortgage debt attributable to such village.

The proportion of the debt chargeable on such villages ought to vary according to the actual value of the village; and the amount of Government revenue assessed on a village may not always be a correct criterion of its actual value.—*Nawab Azimut Ali Khan v. Jowahir Singh and others.* Vol. 13, p. 404.

The sole question being, whether, under the law of the Madras Presidency, the interest of a mortgagee under a deed of conditional sale, does or does not become absolute, according to the terms of the contract, by the mere failure of the mortgagor to redeem at or before the time specified in the deed; the contract, dated 13th June 1808, being, that, the mortgagee should hold possession of the land for five years, paying the Government revenue, that the mortgagor should repay the principal and redeem the land on the 10th June 1813, and that, in default, the mortgagee, and his posterity should enjoy the land as if the transaction were an absolute sale, with the right of alienating the same by gift, sale, &c., and the transaction being one of mortgage by *Bye bil wuffa*, or *Kut Kubala* usufructuary; the usufruct of the property being taken in lieu of interest. *Held*, that the first question which suggested itself, was, whether there was any rule of law to prevent the Court from giving effect to such a contract, according to the intent of the parties plainly expressed by its language. That no such qualifications as had been introduced in Bengal by Bengal Regulation No. XVII of 1806 could be discovered in any Act of Legislation in the Statute Law applicable to Madras. That what is known in the Law of England, as the *Equity of Redemption*, depends on the doctrine established by Courts of Equity, that the time stipulated in the mortgage deed is not of the essence of the contract; and that such a doctrine was unknown to the ancient Law of India. Decree of the Sudder Dewanny Adawlut at Madras, allowing the representative of the mortgagor to redeem, set aside as erroneous.—*Pattabhiramier* v. *Vencatarow Naicken and another.* Vol. 13, p. 560.

In a suit brought in 1862, by the appellants for the redemption of an estate mortgaged by a usufructuary mortgage, in 1828, against the respondents, who were the assignees of the original mortgagees, and in possession, and who claimed to be assignees and *bonâ fide* purchasers of the estate without notice of the appellant's equity of redemption, and also pleaded that the suit was barred by limitation, they having been in possession for more than twelve years. *Held*, that, the mortgage being clear and undisputed, it was upon those who desired to set up any title putting an end to the mortgage, to establish their case by clear and satisfactory evidence; and that the *onus* had certainly not been discharged in this case. That the respondents had not shown that they were purchasers of the property, as an absolute property, in contradistinction to a mortgage property, upon a contract by the vendor to convey the property to them as an absolute property. That they were not *bonâ fide* purchasers, within the meaning of Section 5 of Act 14 of 1859, and were, therefore, not entitled to the benefit of that Act.—*Radanath Doss and others* v. *Gisborne & Co.* Vol. 14, p. 1.

Held, that, in the case before the Court, there was no foundation for saying that the defendants were bound by a decree for sale in exactly the same manner as if they were parties to a foreclosure suit.

No suit of foreclosure ever proceeded actively, or ever was made to work actively, against a party who was not before the Court.—*Anundo Moyee Dossee and others* v. *Dhonendro Chunder Mookerjee and others.* Vol. 14, p. 101.

The question on appeal being, whether the ordinary rules applicable to mortgages expressed in pages 243 to 254, of the 3rd edition of *Macpherson's Law of Mortgages*, did or did not apply to the case before the Court, it being contended that their application was expressly excluded by an agreement between the parties. *Held*, that, according to the best construction that could be given to the contract, the rule stated by *Macpherson* on mortgages was not excluded by the terms of the contract; and that Bengal Regulation No. XV of 1793, Section 7, did not apply to transactions of the kind in question.—*Radhabenode Misser* v. *Kripa Moyee Debea.* Vol. 14, p. 443.

See BENAMEE,
CONDITIONAL SALE,

ESCHEAT,
EVIDENCE,
INSOLVENCY,
INTEREST,
LIEN,
LIMITATION,
MANAGER,
SALE FOR ARREARS OF RENT,
SALE FOR ARREARS OF REVENUE,
USURY,
WIDOW.

MORTGAGEE IN POSSESSION.

See INTEREST.

MORTMAIN ACT.

The Statute of Mortmain does not apply to India.—*Mayor of Lyons* v. *East India Company*. Vol. 1, p. 175.

MOTHER.

See MAHOMEDAN LAW.

MOVEABLE PROPERTY.

See WIDOW,
WILL.

MULTIFARIOUSNESS.

Where plaintiff sued, not summarily, but in due form, for possession of certain Mouzahs, alleged to be his hereditary property, and also to recover certain arrears of rent, for which a summary suit was pending, and a further sum for rent specified in a *Kabooleat;* by the annulment of the summary award of a Deputy Collector, and by the cancellation of a certain letter affirming a *Bhakee Birt* tenure; the specification of the causes of action being accompanied with statements of the falseness of the claim to the *Bhakee Birt* tenure set up by the defendant, of the danger plaintiff apprehended to his proprietary title from the summary decision desired to be set aside, and that its annulment was impossible without a regular suit; and concluding by stating that the plaintiff sued for the reversal of the summary award, the confirmation of his proprietary interest and possession, and the refutation of the allegations of the defendant respecting the *Bhakee Birt* tenure. *Held*, that, the mere inclusion of a claim for rent in a suit of this character could not make the suit multifarious, unless it could be treated as multifarious if it insisted on the repudiation or forfeiture; and that as the Indian Courts have the divided jurisdiction of a Court of Law and a Court of Equity substantially united in one Court, a claim for rent in arrear, and a claim to remove clouds on the title to demise raised by the tenant, are unobjectionable.—*Maharajah Rajundur Kishwur Sing Bahadoor* v. *Sheopursun Misser*. Vol. 10, p. 438.

MUNICIPAL COURTS.

See SOVEREIGN POWER.

MUTUAL CREDITS.

See INSOLVENCY,
SET OFF.

MUTWALY.

See ADVERSE POSSESSION,
MAHOMEDAN LAW.

NABOB OF THE CARNATIC.

Act 30 of 1858, not only limits the extraordinary remedy which it gives to certain defined classes of debt, but throws upon the claimant more than the ordinary burden of proof, compelling the holder of any written acknowledgment, or security, to prove the actual consideration for it; and those claiming the price of goods delivered, to prove the fair and actual value of them.

Appeal against an order of the Supreme Court of Madras, disallowing some, whilst it allowed other items of a claim preferred under Act 30 of 1858, passed for the administration of the estate, and for the payment of the debts of the last Nabob of the Carnatic, dismissed.—*Ghoolam Moortoosah Khan Bahadoor* v. *The Government*. Vol. 9, p. 456.

NATIONS, LAW OF.

See SOVEREIGN POWER.

NATIVE CHRISTIANS.

In an appeal in which the Judicial Committee of the Privy Council considered the true question at issue to be, not who was the heir of one *Matthew Abraham*, but whether he and his brother, the respondent, both of whom were by birth Hindoos of pure native blood, descended from a family of Hindoos, their ancestors for several generations having embraced Christianity, and they themselves being of the class known in India as Native Christians, formed an undivided family in the sense which those words bear in the Hindoo Law, with reference to the acquisition, improvement, enjoyment, disposition, and devolution of property, and which was a question of parcenership and not of heirship. *Held*, that, heirship might be governed by the Hindoo Law, or by any other law to which the ancestor might be subject; but that parcenership, understood in the sense in which the Court used the term, as expressing the rights and obligations growing out of the *status* of an undivided family, is the creature of, and must be governed by, the Hindoo law.

That as to the position of a member of a Hindoo family, who has become a convert to Christianity, he became at once severed from the family, and regarded by them as an outcaste, the tie which bound the family together, so far as he was concerned, being not only loosened but dissolved, the obligations consequent upon, and connected with, the tie being dissolved with it; and that, as parcenership might be put an end to by a severance effected by partition, it must equally be put an end to by a severance which the Hindoo Law recognizes and creates.

That upon the conversion of a Hindoo to Christianity the Hindoo Law ceases to have any continuing obligatory force upon the convert.

That he may renounce the old law by which he was bound, as he has renounced his old religion, or, if he thinks fit, he may abide by the old law, notwithstanding he has renounced the old religion.

That the *Lex loci* Act (21 of 1850,) clearly did not apply, the parties having ceased to be Hindoos in religion.

That the regulations so far as they prescribe that the Hindoo Law shall be applied to Hindoos, and the Mahomedan Law to Mahomedans, must be understood to refer to Hindoos and Mahomedans, not by birth merely, but by religion also.

That this case fell to be decided according to the regulation which prescribes that the decision should be according to equity and good conscience.

That the course pursued in India, of referring the decision to the usages of the class to which the convert may have attached himself, and of the family to which he may have belonged, had been most consonant both to equity and good conscience.

That the profession of Christianity releases the convert from the trammels of the Hindoo Law, but does not of necessity involve any change of the rights or relations of the convert in matters with which Christianity has no concern, such as his rights and interests in, and his powers over, property.

That the convert, though not bound as to such matters, either by the Hindoo Law, or by any other positive law, may, by his course of conduct, after his conversion, have shown by what law he intended to be governed as to these matters; that he may have done so, either by attaching himself to a class which, as to these matters, has adopted and acted upon some particular law, or, by having himself observed some family usage or custom; and that nothing could be more just than that the rights and interest in his property, and his powers over it, should be governed by the law which he has adopted, or the rules which he has observed.

That the English law, as such, is not the law of the Indian Courts, which have, properly speaking, no obligatory law of the *forum*, as the Supreme Courts had; and that the *East Indians* could not claim the English Law as of right, but were a class most nearly resembling the English, conforming to them in religion, manners, and customs; and that the English Law as to the succession of moveables was applied by the Courts in the Mofussil to the succession of the property of this class.

That the Court collected from the evidence, that, the class known in India as *Native Christians*, using that term in its wide and extended sense, as embracing all natives converted to Christianity, has subordinate divisions, forming

again distinct classes, of which some adhered to the Hindoo customs and usages as to property; others retaining those customs and usages in a modified form; and others again, having wholly abandoned those customs and usages, and adopted different rules and laws as to their property; and that of this latter class are the *East Indians*, a class well defined in India, the members of which follow in all things the usages and customs of the English resident there, and who, though they cannot claim the exemption from jurisdiction, or the privilege of a personal law, which the *British subjects*, in the limited sense of the terms of the jurisdiction of the Charters of the Supreme Courts enjoyed, in other respects, in the common bond of union, in religion, customs, and manners, approach the class of British subjects.

That it is not competent to parties to create as to property, any new law to regulate the succession to it *ab intestato* the Court entertained no doubt, though that was not the question here, which was, whether when there are different laws as to property applying to different classes, parties ought not to be considered to have adopted the law as to property, whether in respect of succession *ab intestato*, or in other respects, of the class to which they belong, and the question in this particular case, being, whether the property was bound by the Hindoo Law of parcenership.

That customs and usages as to dealing with property, unless their continuance be enjoined by law, as they are adopted voluntarily, so they may be changed, or lost by desuetude.

That it was competent to *Matthew Abraham*, though himself both by origin, and actually in his youth, a *Native Christian*, following the Hindoo Laws and customs on matters relating to property, to change his class of Christians, and become of the Christian class to which his wife belonged, *viz.*, *East Indian*.

And that his family being managed and having lived, in all respects like an *East Indian* family, in such a family the undivided family union, in the sense before mentioned, was unknown.

The Court was of opinion that the undivided family, on which the respondent relied, did not exist.—*Abraham* v. *Abraham*. Vol. 9, p. 195.

See CHILDREN.

NAWAB OF SURAT.

See JURISDICTION.

NEAREST OF KIN.

See BROTHER.

NECESSITY, LEGAL.

See MANAGER,
MINOR,
WIDOW.

NEGLIGENCE.

See NEGOTIABLE INSTRUMENT.

NEGOTIABLE INSTRUMENT.

The negligence of the party taking a negotiable instrument does not fix him with the defective title of the party passing it to him.

In an action of detinue, the question raised was, as to the authority of *Macleod and Co.*, the Agents of *James William Macleod*, and of Captain *Fagan*, to endorse Promissory Notes of the East India Company, belonging to those principals, and deposited with them as Agents, and which *Macleod and Co.* had endorsed to the Bank of Bengal, as security for advances made to them, *Macleod and Co.*, on their own private account, the authority in both cases being the same, and to the following effect: to "sell, endorse, and assign, or to receive payment of the principal, according to the course of the Treasury, and to receive the consideration money, and give a receipt for the same." *Held*, that, *Macleod and Co.* had power to endorse generally, and not merely a power to endorse ancillary to a sale; and that, though the endorsee's title must depend upon the authority of the endorser, it cannot be made to depend upon the purposes for which the endorser performs the act under the power.—*The Bank of Bengal* v. *Macleod*. Vol. 5, p. 1; *The Bank of Bengal* v. *Fagan*. Vol. 5, p. 27.

See BILL OF EXCHANGE,
PARTNERSHIP.

NEPHEW.

See ADOPTION,
SISTER'S SON,
ZEMINDAR.

NEW EVIDENCE ON APPEAL.

See EVIDENCE.

NEW SUIT.

Where the right and title to a Zemindary in dispute, depended on the fact of a division, the fact of division therefore being a most substantial question to be determined in the case, and one which, according to Madras Regulation No. XV of 1816, ought to have been made a distinct point in the case, and as to which an order ought to have been given for the production of evidence in proof of such averment; but which fact of division had never been alleged as a point in any of the proceedings although evidence which was never directed or sanctioned by the Court had been taken upon both sides of the question. *Held*, that, the inevitable consequence of the non-conformity with the regulation was, that, the decision of the Lower Court being based upon that point of decision alone, could not be sustained; but the parties having unfortunately lost their way through mistake and misapprehension, they were allowed to bring a new suit within three years.—*Srimut Moottoo Vijaya Raghanadha Gowery Vallabha Peria Woodia Taver* v. *Rany Anga Moottoo Natchiar*. Vol. 3, p. 278.

In a suit in which the plaintiff had not, in accordance with Madras Regulation No. XV of 1816, Section 10, Clauses 3 and 4, alleged any case of injury done to them by the defendants, upon which they were entitled to go into evidence, and had not, therefore, established any case for damages in their suit against the defendants, whereby no question remained but as to a mere declaration of a right to perform certain religious ceremonies. *Held*, that, if the Courts below had jurisdiction to proceed to the determination of that question in the suit, the plaintiffs had not produced sufficient evidence to establish such a right. That the decrees of the Lower Courts ought to be reversed, and the plaint dismissed without prejudice to the existence or non-existence of the right claimed by the plaintiff in any other suit, in which such a question might be properly raised.—*Namboory Setapaty and others* v. *Kanoo Colanoo Pullia and others*. Vol. 3, p. 359.

Under the peculiar circumstances of the case, it was recommended that the appeal be allowed and the suit dismissed with costs, without prejudice to the right of the respondents to bring, if so advised, a new suit for recovery of the lands in question upon certain grounds mentioned.—*Rajah Burdacant Roy* v. *Baboo Chunder Coomar Roy and others*. Vol. 12, p. 145.

See NON-SUIT.

NEW TRIAL.

The suspicion, however probable, of the Judge, that a party, who has failed to prove his case, may be more successful on a second and fuller investigation, is no sufficient ground for directing a new trial. *Maharajah Koowur Baboo Nitrasur Singh* v. *Baboo Nund Loll Singh and others*. Vol. 8, p. 199.

See EVIDENCE,
ISSUES,
PRACTICE,
TROVER.

NEXT FRIEND.

See MINOR.

NICKA MARRIAGE.

See LEGITIMACY.

NON-REGULATION PROVINCES.

See PRACTICE.

NON-SUIT.

The Judicial Committee of the Privy Council were not aware of any authority which sanctioned the exercise by the country Courts in India of that power which English Courts of Equity occasionally exercise, of dismissing a suit, with liberty to the plaintiff to bring a fresh suit for the same matter; nor is what is technically known in England as a *Non-suit* known in those Courts.

There is a proceeding in those Courts called a *Non-suit*, which operates as a dismissal of the suit without barring the right of the party to litigate the matter in a fresh suit, but it seems limited to cases of misjoinder either of parties or

of the matters in contest in the suit; to cases in which a material document has been rejected because it has not borne the proper stamps; and to cases in which there has been an erroneous valuation of the subject of the suit. In all those cases the suit fails by reason of some point of form, but there is no case in which, upon an issue joined, where the party has failed to produce the evidence which he was bound to produce in support of that issue, liberty has been given him to bring a second suit.

Without laying down positively, that in no case could such a reservation of the right to bring a fresh suit be properly made by a Judge in one of the Indian Courts, the Judicial Committee of the Privy Council were of opinion, that it is open to the High Court in a case in which a former decree has been pleaded as *res judicata*, and, in which, all the circumstances under which it was made are before the Court, to consider the propriety of the reservation.—*Watson* v. *The Collector of Rajshahye and others.* Vol. 13, p. 160.

NOTICE.

See AGENT,
BILL OF EXCHANGE,
EVIDENCE,
MORTGAGE,
REGISTRATION,
SALE FOR ARREARS OF RENT,
SALE FOR ARREARS OF REVENUE,
SALE UNDER DECREE.

NOTICE OF FORECLOSURE.

See MORTGAGE.

NOTICE OF SALE.

See SALE FOR ARREARS OF REVENUE,
SALE UNDER DECREE.

NOT GUILTY.

See JURISDICTION.

NOVATION.

Surety Bonds for a Treasurer, subsequently found guilty of embezzlement, were three times renewed. Appellant urged, that by the renewal of the Bonds, each Bond, as it was renewed, was, in fact, a novation, so that no action could any longer be maintained upon the old Bond, and that the surety only became responsible for the deficiencies which might take place subsequently to the giving of the new Bond. *Held*, that, the old Bonds had never been given up, that the surety had not asked for them, and that there was nothing to show that he had any idea that he was discharged, or that he had a right to the old Bonds, or to show that the Government intended to give up or abandon any claim that they had upon any of the Bonds.—*Lalla Bunseedhur* v. *The Bengal Government.* Vol. 14, p. 86.

NUDUM PACTUM.

See INTEREST.

NUMUK SEYAR MEHAL.

The *Numuk Seyar Mehal* is the revenue which before the accession of the East India Company to the Dewanny, was derived by the Native Governments from the manufacture of saltpetre, and upon the Company's accession to the Dewanny they became entitled to this revenue, subject, of course, to any valid and effectual disposition of it, which might have been made by the Native Governments, in so far as the Company might be bound by such dispositions.

A party having failed to make good his claim to a *Numuk Seyar Mehal*, founded on certain Sunnuds, the Court being of opinion that the Sunnuds were not authentic, held to be not entitled to resort to any presumption which, possibly, might otherwise have been made.

Bengal Regulation No. VIII of 1793, relates to the Land Revenue, and to settlements concluded with the actual proprietors of the soil, and has no relation to the *Numuk Seyar Mehal*, or any settlement made in respect of it with persons who are not proprietors of the soil.—*The Bengal Government* v. *Nawab Jafur Hossein Khan.* Vol. 5, p. 467.

NUNCUPATIVE WILL.

If any party is bound to strictness of pleading, it is he who sets up a Nuncupative Will.

He who rests his title on so uncertain a foundation as the spoken words of a man, since deceased, is bound to allege, as well as to prove, with the utmost precision, the words on which he relies, with every circumstance of time and place.—*Baboo Beer Pertab Sahee* v. *Maharajah Rajender Pertab Sahee.* Vol. 12, p. 1.

See WILL.

OCCUPANCY RIGHTS.

See ENHANCEMENT OF RENT.

OFFICIAL ASSIGNEE.

See INSOLVENCY.

OFFICIALS.

There can be no rule more firmly established, than that if parties *bonâ fide*, and not absurdly believe that they are acting in pursuance of Statutes, and according to law, they are entitled to the special protection which the Legislature intended for them, although they have done an illegal act.—*Spooner and another* v. *Juddow.* Vol. 4, p. 351.

See GOVERNMENT OFFICER,
TORT.

ONLY SON.

See ADOPTION.

ONUS PROBANDI.

See ALLUVIAL LANDS,
ARBITRATION,
BENAMEE,
COMPROMISE,
CUSTOM,
DIVORCE,
ENHANCEMENT OF RENT,
ESCHEAT,
EVIDENCE,
FRAUD,
GUARDIAN AND WARD,
HUSBAND AND WIFE,
INCUMBRANCER,
JOINT UNDIVIDED HINDOO FAMILY,
LA KHIRAJ LANDS,
LEGITIMACY,
LIEN,
LIMITATION,
MINOR,
MORTGAGE,
NABOB OF THE CARNATIC,
NUNCUPATIVE WILL,
RELIGIOUS TRUST,
RESUMPTION OF LANDS,
SALE FOR ARREARS OF REVENUE,
TORAS GARAS,
TRESPASS,
WIDOW,
WILL.

ORDER IN COUNCIL.

See PRACTICE.

OUSTER.

See LEASE.

OUT OF ENGLAND.

See CONSTRUCTION.

OUT OF THE REALM.

See CONSTRUCTION.

OUT OF THE TERRITORIES.

See CONSTRUCTION.

PAKLI HUQ.

Suit to establish a claim, as of hereditary right, to an annual payment for *Palki Huq*, or palanquin allowance, the only issue settled being, whether the right claimed was perpetual, or whether the Government was competent to make it cease whenever they pleased to do so. *Held*, upon the special ground that under the native rulers this allowance was treated as permanently annexed to the office of *Desai* of the Pergunna of Broach, and was confirmed in 1808, by the British Government as appurtenant to the office, that the claimant was entitled to the Palki allowance claimed.

The Court was unable to concur with the High Court of Bombay that upon the facts the claimant had under the provisions of Bombay Regulation No. V of 1827, Clause 1, Section 1, acquired

a title by prescription to maintain his suit, whatever might have been the original title of his ancestors to the Palki allowance claimed.

The Court was by no means satisfied, that, the allowance, though payable out of the Government Revenue of a particular pergunna, could properly be said to be *immoveable property* within the meaning of Clause 1, Section 1 of Bombay Regulation No. V of 1827. It did not constitute a charge which could be enforced against the land, or since 1808, against the revenues of the land prior to the claim of Government.

The utmost right, was, to receive, after the perception of the revenues by Government, a certain annual sum of money, out of the Collector's treasury; and the regulation afforded no bar to the trial of the question between the Government and the claimant upon its merits.—*The Bombay Government* v. *Desai Kullianrai Hakoomutrai.* Vol. 14, p. 551.

PARCENERSHIP.

See NATIVE CHRISTIANS.

PARSEE.

See RESTITUTION OF CONJUGAL RIGHTS,
WILL.

PARTIES.

See DECREE FOR AN ACCOUNT,
PRACTICE,
SALE FOR ARREARS OF RENT,
SPECIAL LEAVE TO APPEAL.

PARTITION.

Suit for partition of certain *Enam* villages in the southern Mahratta country, which had been granted by the Government of Bombay by a Sunnud to the ancestor of the appellant and respondents, to hold to him and his posterity, in the male line, from generation to generation, Pleas, to the effect, that the villages could not be partitioned, and that, in such cases, a division was not contemplated by the Hindoo Law. *Held*, that, there was no reason why the villages in question should not be governed by the general principles of the Hindoo Law respecting the partition of the father's estate among his heirs; and that the mode of collecting the revenue had nothing to do with the question.—*Bodhrao Hunmont* v. *Nursing Rao and others.* Vol. 6, p. 426.

A partition is favorably viewed by the Hindoo Law. It wants no extrinsic support.

It would be a prudent course in the members of a joint family, to prevent, by a partition, the interference of strangers in their family arrangements, and an enquiry into the state, condition, extent, and uses of their joint property.—*Juggut Mohini Dossee and others* v. *Mussumat Sokheemoney Dossee and others.* Vol. 14, p. 289.

See DIVISION,
ILLEGITIMACY,
JOINT UNDIVIDED HINDOO FAMILY,
NEW SUIT,
POLLIAM TENURE,
WIDOW.

PARTNERS.

See LEASE.

PARTNERSHIP.

A Hindoo having by Will bequeathed his business to his five sons, in equal shares, and they having continued to carry on the business jointly, until the death of one of them, the partnership assets, consisting in part of Company's paper, which was taken in the name of the deceased son, or in his name jointly with the names of the other brothers, and, (it being necessary that this paper should be endorsed,) the deceased having endorsed the notes in blank, and given them to his brothers. *Held*, that, this was a mere ordinary partnership transaction, for the purpose of enabling the partners to realize part of the assets of the partnership, which would not affect the right that each son had to his share of the profits, nor give the son who had died, the exclusive right to the Company's paper which he so endorsed, though taken in his name alone, but only made it part of the assets of the partnership in which he would be entitled to his share after the expenses of the partnership were duly discharged.—*Bissonauth Chunder and others* v. *Sreemutty Bamasoondery Dossee and others.* Vol. 12, p. 41.

Every one of the partners in a Mercantile firm of ordinary trading partnership is liable upon a Bill drawn by a partner in the recognized trading name of the firm, for a transaction incident to the business of the firm, although his name does not appear upon the face of the instrument, and although he be a sleeping and secret partner.

In order to take a case out of these principles of the general law, it must be shown that the holder of the Bill knew at the time he received it that the transaction was the private affair of a single partner.—*Bunarsee Dass* v. *Gholam Hossein and others.* Vol. 13, p. 358.

In a suit for the recovery of a large balance alleged to have been found due upon the winding up of a special partnership. *Held*, that, the plaintiffs had failed to prove that there was any sum due to them.—*Seth Lukhmee Chund Rao Bahadoor and another* v. *Seth Indra Mull and others.* Vol. 13, p. 365.

See ILLEGITIMACY,
JOINT UNDIVIDED HINDOO FAMILY,
JURISDICTION,
MORTGAGE.

PATENT OFFICE.

See MOONSIFF,
SPECIAL LEAVE TO APPEAL.

PATERNAL PROPERTY.

See ANCESTRAL PROPERTY.

PAWN.

See INSOLVENCY,
LIEN.

PAYMENT.

See BILL OF EXCHANGE,
STOPPAGE IN TRANSITU.

PAYMENT INTO COURT.

See VOLUNTARY PAYMENT.

PAYMENTS.

See APPROPRIATION.

PENDING PROCEEDING.

See LIMITATION.

PEREMPTION OF APPEAL.

See PRACTICE.

PERJURY.

See EVIDENCE.

PERMISSION TO SUE.

See SEQUESTRATION.

PERPETUAL LEASE.

See CUTTOOGOOTAGA TENURE.

PERPETUAL OR PERMAMENT SETTLEMENT.

See ENHANCEMENT OF RENT,
LA KHIRAJ LANDS.

PERPETUITY.

See MOCURRERY.

PERSONAL PROPERTY.

See TENURE.

PIOUS AND CHARITABLE USES.

See MAHOMEDAN LAW.

PLEADING.

See EVIDENCE,
ISSUES,
JURISDICTION,
NUNCUPATIVE WILL,
PRACTICE.

PLEDGE.

See AGENT.

POLICE.

See CHAKERAN LANDS.

POLICY OF INSURANCE.

See TIME POLICY.

POLITICAL MEASURES.

See SOVEREIGN POWER.

POLLIAM TENURE.

A *Polliam* is in the nature of a Raj; it may belong to an undivided family,

but it is not the subject of partition. It can be held by only one member of the family at a time, who is styled the *Polligar*, the other members of the family being entitled to a maintenance or allowance out of the estate.

The *Polliam* in question held to be ancestral property, and the right to it to vest in the next male heir of the family, in preference to the widow.—*Naragunty Lutchmeedavamah* v. *Vengama Naidoo*. Vol. 9, p. 66.

See ESCHEAT.

POLLIGAR.

See POLLIAM TENURE.

POSSESSION.

The title of possession must prevail until a good title is shown to the contrary.—*Rajah Pedda Vencatapa Naidoo* v. *Aroovala Roodrapa Naidoo and another*. Vol. 2, p. 504.

It is essential for a party seeking to oust another from the possession of an estate, to show a better title to the estate, *i.e.*, a title which would give the claimant a right to the estate failing the title impeached.

The first question to be decided is, whether the plaintiff has shown any title to the property.

The general rule, that the possession of one member of a joint Hindoo family is the possession of all, does not apply where the claimant has been clearly excluded. In the latter case, the possession is adverse, and time will run.—*Jowala Buksh* v. *Dharum Singh and others*. Vol. 10, p. 511.

See ADVERSE POSSESSION,
DOWER,
EVIDENCE,
FOUJDARRY COURT,
LIMITATION.
MORTGAGE,
POTTAH,
PRACTICE,
SALE UNDER DECREE,
TENANCY IN COMMON,
TITLE,
WIDOW.

POTTAH.

In Calcutta the *Pottah* forms no part of the title. It is the conveyance that gives parties a right to claim the *Pottah*.

This *Pottah* is issued by the Collector. He is the Officer of the Government, and it appears on the very face of it, that it is nothing more than a fiscal regulation, introduced for the purpose of collecting the tribute to which the land is subject.—*Freeman* v. *Fairlie*. Vol. 1, p. 305.

Pottah construed to the effect that the appellant was not entitled to a reduction of Rupees 714-11-0 per annum, on the fixed annual rent reserved, and which reduction was claimed by the appellant in respect of certain lands alleged to have been resumed by Government out of the Zemindary originally leased to him.—*Prannath Roy Chowdry* v. *Ranee Surnomoye Dossee*. Vol. 9, p. 431.

Pottah is a generic term which embraces every kind of engagement between a Zemindar and his under-tenants, or ryots.

A *Pottah* must not *primâ facie* be assumed to give any hereditary interest, if it contains no words of inheritance.

Proof that for upwards of forty years since the death of the original lessee, the hereditary nature of the tenure had been recognized by the successive Zemindars, and that some of them had recognized its transferable nature. *Held*, to afford ample grounds for inferring either that the tenure was always intended to be hereditary, although not so expressed in the *Pottah*, or, that, if the original grant were limited to the life of the original lessee, his tenure had by some subsequent grant become hereditary, and transferable; and that the proof given of long and uninterrupted enjoyment accompanied by the recognition of its hereditary and transferable character would supply the want of the words "from generation to generation" in the *Pottah*.—*Baboo Dhunput Singh* v. *Gooman Singh and others*. Vol. 11, p. 433.

See ENHANCEMENT OF RENT,
TENURE.

POWER,

See WILL.

POWER, EXECUTED.

See WILL.

POWER OF ATTORNEY.

Held, that there was no legal proof of the execution by the respondent, a widow, of a *Mooktearnamah*; and that the absence of such proof was not compensated for by any legitimate inferences to be drawn from the other facts disclosed in the case.—*Seetul Pershad* v. *Mussumat Doolhin Badam Konwur and others.* Vol. 11, p. 268.

See EVIDENCE.

PRACTICE.

An appeal dismissed for want of prosecution, allowed to be restored upon payment of costs, where the Court below had consolidated it with another pending cause; the petition of appeal against the decisions in the consolidated appeals being presented within the time allowed by the Court rules.—*Surroopchunder Sircar Chowdry* v. *Ramrutton Mullick.* Vol. 1, p. 358.

In a case coming before the Court of the Judicial Committee of the Privy Council depending upon facts which have received the judgment of two Courts in India, that Court ought not to set aside the last judgment unless it can see very clearly that that judgment is wrong. It must be most completely satisfied that it is wrong, and inconsistent with the justice of the case and against the facts.—*Pctamber Manikjee* v. *Moteechund Manikjee.* Vol. 1, p. 420.

The rule upon which the Court of the Judicial Committee of the Privy Council has universally acted, is, to affirm the judgment unless it is seen that the same is clearly wrong.—*Khoorshedjee Manikjee* v. *Mehrwanjee Khoorshedjee and another.* Vol. 1, p. 431.

The appellant, in answer to a plaint for the recovery of a village, brought by the heir of the original grantee, not denying by any of his grounds of defence that the respondent was entitled to sue as the heir of such original grantee. *Held*, that, it was not competent to the appellant, on the appeal to the Judicial Committee of the Privy Council, to object to a deficiency of proof upon this point.—*Mills* v. *Modee Pestonjee Khoorsedjee.* Vol. 2, p. 37.

The Court doubted whether the Sheriff of Madras under a writ of *Fi-fa*, which required him to seize goods and chattels within the jurisdiction of the Supreme Court, had any right to seize and proceed against lands which were not *primâ facie* within the jurisdiction of that Court, but considered that it was not necessary to enter into the question. —*Lasar and another* v. *Colla Ragava Chetty.* Vol. 2, p. 83.

Order dismissing an appeal for want of prosecution, rescinded on terms, the appellants alleging that through the respondent having bespoken the first copy of the transcript, and from the voluminous nature thereof, they the appellants had been precluded from forwarding their copy within the time limited. —*Sree Mutty Bissnosoondry Dabee and another* v. *Rajah Burrodacaunt Roy.* Vol. 2, p. 127.

Where the Supreme Court of Bombay, in a suit before it in its equitable jurisdiction, remitted for trial certain issues, which were afterwards tried by the Court on the plea side thereof, and a verdict found for the defendants. *Held*, that, the plaintiffs if they objected to such finding, should have applied to the equity side of the Court for a new trial, as a verdict against evidence; and the refusal of a new trial, and consequent adoption of the finding as one of the grounds for a decree, would then have been the subject of appeal; and, the propriety of the decision on the facts, could have been considered and decided in the Court of Appeal. But, the plaintiffs not having done so, they must be taken to have made no objection to the finding; and the verdict on the issues, of which the postea was the only evidence, was to be treated as one proof of the truth of the facts in the cause involved in it, and might be acted upon accordingly.

There having been no application for a new trial, the facts proved on the issues, and the propriety of the finding upon it, cannot be brought under the review of the Judicial Committee of the Privy Council; and the appeal must be confined to the propriety of the decree on further directions, founded on the postea, and the evidence in the cause. —*Nathoobhoy Ramdass* v. *Mooljee Madowdass and others.* Vol. 2, p. 169.

It is unquestionably the strict rule, and ought to be distinctly understood as

such, that no cause in the Court of the Judicial Committee of the Privy Council can be re-heard, and that an Order once made, that is, a report submitted to His Majesty, and adopted, by being made an Order in Council, is final, and cannot be altered.

The same is the case of the judgments of the House of Lords, that is, of the Court of Parliament, or of the King in Parliament, as it is sometimes expressed, the only other Supreme Tribunal in England.

Whatever, therefore, has been really determined in these Courts must stand, there being no power of re-hearing for the purpose of changing the judgment pronounced.

Nevertheless, if by misprision in embodying the judgments, errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of Record and Statute have of rectifying the mistakes which have crept in.

The safer and better course where the appellant does not appear, and there are no means of knowing the grounds of his appeal, seems to be, that the order should be to dismiss without affirming the decree appealed from.

Where the respondent does not appear, *ex necessitate* the Court must hear and determine the case upon the best consideration of its merits, which, the matters before the Court enables it to give. But in neither case can the judgment be pronounced as of course for the party appearing, merely on the ground of the other parties' absence.

Order, on terms, made, for the restoration of an appeal dismissed for want of appearance on the part of the appellants, the parties being infants under the Court of Wards in Calcutta, appearing by a public functionary, through the appointment of that Court, as their guardian *ad litem*, who neglected the case altogether, provided no funds for carrying it on, but absconded with funds in his hands which had been allowed for the expense of the suit, and who was not to be found when the agent in England desired to communicate with him.—*Rajunder Narain Rae and another* v. *Bijai Govind Sing*. Vol. 2, p. 181.

Leave given to substitute service of an Order of Revivor on the Dewan, or chief servant, of one of the respondents, a Hindoo widow of rank, upon whom service personally could not be effected.—*Clerk* v. *Mullick*. Vol. 2, p. 268.

In reviewing the proceedings in India, where the Hindoo and Mahomedan Laws are the rule, and where the forms of pleading are wholly different from those in use in Courts where the law of England prevails, the Court must look to the essential justice of the case, without considering whether matters of form have been strictly attended to.—*Ghirdharee Sing* v. *Koolahul Sing and others*. Vol. 2, p. 344.

If a Bill in Equity contains charges, putting facts in issue that are material, the plaintiff is entitled to the relief which those facts will sustain under the general prayer, but he cannot desert the specific relief prayed, and under the general prayer ask specific relief of another description, unless the facts and circumstances charged by the Bill will, consistently with the rules of the Court, maintain that relief.—*Cockerell and others* v. *Dickens*. Vol. 2, p. 353.

Appeal dismissed for want of prosecution, restored on terms, the delay having been caused partly by the appellant's ignorance of the form of proceeding, and partly by the insolvency of the agent in England of a Calcutta firm with which the appellant had entered into an agreement for the appointment of an agent for the purpose of prosecuting the appeal.—*Rajah Deedar Hossein* v. *Ranee Zuhoor-oon-nissa*. Vol. 2, p. 441.

Certain documents which had been tendered to the Sudder Court upon a rejected application for a review of judgment, not allowed to be read as evidence on the appeal, there being an appeal against the original decree only, and none from the order refusing the application for a re-hearing.—*Sheikh Imdad Ali and others* v. *Mussumat Kootby Begum*. Vol. 3, p. 1.

Two counsels for each set of the appellants allowed, the interests of the separate appellants being hostile.—*Jewajee and others* v. *Trimbukjee and another*. Vol. 3, p. 138.

It is a safe maxim for a Court of Appeal to be governed by, that if an objection, which, if taken, might have been cured, has not been taken in the Court below, it shall not be taken in the Court of Appeal.—*Dhurm Das Pandey* v. *Mussumat Shama Soondri Dibiah*. Vol. 3, p. 229.

A cause having been recommended by the Judicial Committee of the Privy Council to be remitted back to the Court below in consequence of that Court's refusal to hear certain witnesses on behalf of the appellants; when that judgment was pronounced and affirmed by Her Majesty in Council, the original reference of the appeal to the Judicial Committee of the Privy Council was entirely exhausted, and its authority was completely at an end.

The Lower Appellate Court remanded a case, so remitted, to the Court of First Instance, with directions to examine the witnesses, which was done, and the evidence so taken transmitted to the Lower Appellate Court, whereupon that Court, without any adjudication, sent the case again directly up to the Court of the Judicial Committee of the Privy Council. *Held*, that that Court had no jurisdiction to entertain the case, having no authority under the original reference, and there being no fresh appeal or second reference.

After hearing the evidence which had been offered, the case ought to have been decided, and, if either of the parties had been dissatisfied, there ought to have been a fresh appeal, and the case ought to have been brought under the consideration of the Judicial Committee of the Privy Council in the usual and ordinary manner.

However, under the circumstances, and with the express consent of the parties on both sides, the Judicial Committee of the Privy Council reported to Her Majesty their opinion, that Her Majesty's Order in Council remitting the case back to the Court below ought to be varied, so as to make it an order merely to take fresh evidence, and to remit that evidence to the Court of the Judicial Committee of the Privy Council, which entirely cured any irregularity, and enabled that Court to hear the case in the usual way.—*Jeswunt Singjee Urby Singjee and another* v. *Jet Singjee Urby Singjee.* Vol. 3, p. 245.

Where the Judge of the Court of First Instance, by suppressing from the Court of Sudder Dewanny Adawlut certain documents which had been proved in the Court below, had prevented the case from ever being properly presented to the consideration of the Court of Sudder Dewanny Adawlut, whereby that Court had not the means, which it ought to have had, of forming a judgment upon it. *Held*, that, the suit must be remitted back to the Court of Sudder Dewanny Adawlut.—*Juveerbhaee and others* v. *Vurujbhaee and others.* Vol. 3, p. 324.

The tendency of the Court of the Judicial Committee of the Privy Council, since its institution—as of the Privy Council before—has been, not to give way unnecessarily to objections merely of form.—*The Mokuddims of Kunkunwady* v. *The Enamdar Brahmins of Soorpal.* Vol. 3, p. 383.

The concurrence of opinion of two Courts in India, even upon a mere question of fact, will not prevent the Court of the Judicial Committee of the Privy Council acting upon its own independent judgment.—*Rungama* v. *Atchama and others.* Vol. 4, p. 1; *Huradhun Mookurjia* v. *Muthoranath Mookurjia and others.* Vol. 4, p. 414; *Mudhoo Soodun Sundial* v. *Suroop Chunder Sirkar Chowdry.* Vol. 4, p. 431; *Tayammaul* v. *Sashachella Naiker and another.* Vol. 10, p. 429.

Query. Whether the order of the Court of the Judicial Committee of the Privy Council authorizing a party to sue *in formâ pauperis* is not necessary, although leave to appeal to England *in formâ pauperis* may have been granted in India by the Sudder Court.—*Munni Ram Awasty* v. *Sheo Churn Awasty and another.* Vol. 4, p. 114.

The appellant's case being ready to lodge, and no appearance to the appeal having been entered by either of the respondents, the Court, on the application of the appellant, ordered that the appellant be at liberty to serve due notice on the respondents in person, or on their respective representatives in India, should either of them be dead, to the effect, that in the event of the respondents not appearing, and bringing in their case without delay, the case would be heard *ex-parte;* and, that he be at liberty to take such proceedings in the Court below as might be requisite to render such notice or notices effectual. The proceedings thereon having been transmitted by the Court of First Instance to the Lower Appellate Court, and by that Court to England, and no appearance having been entered by the respondents, the Court proceeded to hear the appeal.—*Wise* v. *Kishenkoomar Bous and another.*

Vol. 4, p. 201; *Konadry Valabha* v. *Valia Tamburati*. Vol. 4, p. 213.

A purely technical point, if not taken in the Court below, cannot be taken in the Court of the Judicial Committee of the Privy Council.—*The Bank of Bengal* v. *Macleod*. Vol. 5, p. 1.

A petition having been presented to the Judicial Committee of the Privy Council, praying that Court to dismiss an appeal, the parties in India having entered into a compromise, and which petition also prayed, that directions might be given to the Sudder Dewanny Court to carry into effect the terms of the deed of compromise, the Judicial Committee of the Privy Council granted leave to withdraw the appeal, but refused to make an order directing the Sudder Dewanny Court to carry into execution the terms of the compromise; leave, however, being reserved to the parties to apply to the Court below to take further proceedings under the agreement of compromise.—*Raja Sutti Churn Ghosal* v. *Sri Mudden Kishore Indoo*. Vol. 5, p. 107.

Held, that, the rule and practice of the High Court of Admiralty prevailed in governing the proceedings of the Supreme Court of Bombay in its Admiralty jurisdiction, in a salvage suit; That the appeal therein had been altogether peremptory by certain proceedings which had taken place; That the effect of perempting the appeal was entirely to take away the right of the appellants to appeal; and That nothing thereafter done could restore the appellants to the condition in which they were before the time when the act of peremption took place.—*Loughnan and others*, v. *Haji Joosub Bhulladina and another*, (*The "Hydroos."*) Vol. 5, p. 137.

The Court of the Judicial Committee of the Privy Council will not question the validity of an order of the Sudder Court substituting an appellant for the original one, who has died. The respondents, if prejudiced, should move the Court below to discharge the order of substitution.

Where by alleged neglect or refusal of the Registrar, copies of a portion of the depositions only were returned, a peremptory order was made to the Sudder Dewanny Adawlut, directing them to forthwith transmit copies of the omitted depositions.—*Baboo Kasi Persad Narain* v. *Mussumat Kawalbasi Kooer and others*. Vol. 5, p. 146.

An allegation in a plaint that parties are Mahomedans or Gentoos, is a sufficient averment of the fact for all judicial purposes.—*Her Highness Ruckmaboye* v. *Lulloobhoy Mottichund*. Vol. 5, p. 234.

Under Section 10 of Bengal Regulation No. XXVI of 1814, after the pleadings are filed, the Court should record a proceeding specifying the point or points to be established, and calling for evidence for and against the claim.

The inadvisability of a defendant, after having put in his answer stating facts within his own knowledge, or which he had the means of ascertaining, on finding that he has no defence as the case stands, being afterwards allowed under Bengal Regulation No. IV of 1793, Section 5, to file a supplemental answer, stating facts in direct variance with the first answer, and changing the issue in the cause, remarked upon.—*Douglas* v *The Collector of Benares*. Vol. 5, p. 271.

Application to stay execution of a decree of the Sudder Dewanny Court at Madras, pending an appeal to England, refused as too late, the order for execution of the decree having most probably been acted upon.—*In re Rajah Bommaranjee Bahadoor*. Vol. 5, p. 298.

Peremptory order granted, directing the Judges of the Court of Sudder Dewanny Adawlut at Madras to execute a decree of Her Majesty in Council, and to put the petitioner in possession of the land and property awarded him by that decree, the Sudder Court being of opinion, that, the property in question having been seized, pending the appeal, by the Board of Revenue, they alone had a rightful title, with which the Sudder Court could not interfere. The right of the Madras Government, and of all persons, except the respondents in the original appeal, to appear for their interest, if any, was reserved.—*In re Rajah Vassareddy Lutchmeputty Naidoo*. Vol. 5, p. 300.

If a party asks an indulgence, and that the rule prescribing the appealable amount be relaxed, it ought not to be granted but upon terms.

Appeal allowed against a return of Commissioners of partition, and certain orders of the Supreme Court of Calcutta, confirming the return, upon

terms, the subject-matter being under the appealable value.—*In re Sib Narain Ghose.* Vol. 5, p. 322.

An appeal, upon terms, allowed to proceed where there had been great laches, but not such as, in the opinion of the Court, ought entirely to shut out the appeal, the recognizance being increased to £1,000.—*McKellar* v. *Wallace and another.* Vol. 5, p. 372.

Respondent in November 1853, when the appellant had set down the appeal for hearing *ex parte*, having put in an appearance, and applied for six months' time to lodge his printed case, and that in the meantime the hearing of the appeal might be postponed, on the ground of the voluminous nature of the proceedings, and stating that the delay which had taken place on his part had arisen through his ignorance of the rules and proceedings of the Appellate Court, and not from any wilful or culpable neglect on his part; the Court decided that from the great delay which had already taken place they could only grant the respondent until the following February, and that that indulgence would be upon the terms of the respondent undertaking not to do anything in the interval to the prejudice of the appellant, or to the fund in the Court below, and upon payment of the costs of the motion.—*Watson* v. *Sreemunt Lal Khan.* Vol. 5, p. 447.

Upon the question whether the Lower Court was right in fact, the course which the Judicial Committee of the Privy Council always takes in appeals from the inferior Courts of India, where the Judges are so much more familiar with the circumstances of the parties, the nature of the case, and the probabilities or improbabilities attached to certain states of circumstances, and the credibility of the witnesses, is, that, although it by no means considers it conclusive, it still gives great credit to their opinion, and the Court is not in the habit of disturbing a judgment founded upon a decision of those questions, unless it entertains a clear and strong opinion upon it. But, where a judgment has been pronounced, and a verdict found, and that judgment pronounced by the Judges of the Supreme Court, sitting as a Court for the purpose of the trial of an action, the Court of the Judicial Committee will give, at least, the same weight to that decision as is given in England to the verdict of a jury, to which the Judge who tries the cause makes no objection, and where there are no reasonable grounds to suppose that the jury have come to a wrong conclusion. It is not sufficient to say that the Judge might, probably, if the case was *res integra*, have come to a different conclusion.—*Musadee Mahomed Cazum Sherazee* v. *Meerza Ally Mahomed Shoostry and another.* Vol. 6, p. 27.

Upon motion to restore an appeal which had been dismissed for want of prosecution, upon the grounds that there had been no *laches*, the dismissal having been made under new rules and regulations of which the petitioner was necessarily ignorant, the restoration of the appeal, upon terms, was recommended.—*Gudadhur Purshad Tewarree* v. *Moosumat Soonderkoomaree.* Vol. 6, p. 201; *Seto Luchmeechund* v. *Seto Zorawur Mull.* Vol. 6, p. 204.

An *ex parte* application for special leave to appeal having been granted, the respondent is entitled, as of course, to move to dismiss, upon presenting a counter-petition for that purpose.

Appellant, in his petition for leave to appeal, having erroneously alleged as a ground for the indulgence of the Court a fact as to which the Judges of the Court below certified to the contrary, appeal dismissed with costs, as a warning for the future; it being considered a matter of the highest importance that upon an *ex parte* application care should be taken to speak the truth.—*Sib Narain Ghose* v. *Hullodhur Doss.* Vol. 6, p. 207.

Application by appellant for an extension of the time for appeal prescribed by the 5th Rule of the Order in Council of the 13th June 1853, on the ground that an enquiry was pending before the Master of the Supreme Court of Calcutta, arising out of the decree appealed from, the finding upon which it was anticipated would render the prosecution of the appeal unnecessary. *Held*, that, enough had been shown to induce the Court to retain the appeal, notwithstanding the new rules, and to direct that the petitioner be at liberty to suspend proceedings thereon until further order.

The Court has no jurisdiction to

entertain such an application until the petition of appeal has been lodged.—*Gungadhur Seal* v. *Sreemutty Raddamoney Dossee.* Vol. 6, p. 209.

When the Court of the Judicial Committee of the Privy Council finds that a Court having jurisdiction to try matters of fact has determined a matter of fact in a certain way, particularly a matter of fact of a local description, and to which local knowledge might very much assist, it will not be disposed to reverse such decision because it does not quite see its way to the same conclusion.—*Doe dem Seebkristo and others* v. *The East India Company.* Vol. 6, p. 267.

Where after the arrival of the transcript in England, the appellant presented a petition under Madras Regulation No. VIII of 1818, Section 4, for an order calling upon the respondents to give security for mesne profits, or that the appellant might be put in possession upon giving security, or that the property might be attached pending the appeal, which application had been refused by the Sudder Dewanny Court, the Judicial Committee of the Privy Council decided, that, as the regulation under which the application was made did not apply to the case, it was unnecessary to decide whether they had such a discretion, as the appellants had assumed, of directing securities to be furnished by the respondents, and that there was, in fact, no allegation in the petition that the respondents had committed waste, but merely of a rumour of a mortgage of part of the estate.—*Nagalutchmee Ummal* v. *Gopoo Nadaraja Chetty and others.* Vol. 6, p. 309.

Upon a petition, made after the lapse of a year and a day, by the respondents to dismiss an appeal for want of prosecution, the appeal having been allowed by the Supreme Court of Calcutta, but no further proceedings having been taken by the appellant, and the Registrar of the Supreme Court having certified that no steps had been taken since the date of the order granting the appeal. *Held,* that, the Court would have felt great difficulty if the petition had not been referred to them, but, that, as it had been referred, they were of opinion that they could dismiss the appeal for want of prosecution.—*Sreemutty Rabutty Dossee* v. *Radanauth Sein and others.* Vol. 6, p. 346.

It is of the utmost importance to the right administration of justice, that Indian Courts should constantly bear in mind, that by their very constitution they are to decide according to equity and good conscience; that the substance and merits of the case are to be kept constantly in view; that the substance and not the mere literal wording of the issues is to be regarded; and that if by inadvertence, or other cause, the recorded issues do not enable the Court to try the whole case on the merits, an opportunity should be afforded by amendment, and, if need be, by adjournment, for the decision of the real points in dispute.—*Hunooman Persaud Panday* v. *Mussumat Babooee Munraj Koonweree.* Vol. 6, p. 393.

Order granting leave to appeal rescinded, and the recognizances entered into on behalf of the appellant discharged; it appearing that the parties had come to a compromise.—*Reed* v. *Sreemutty Gourmoney Dabee.* Vol. 6, p. 490.

Under very peculiar circumstances, there appearing to have been two opposite decisions in India, upon what was substantially the same question, an appeal which had been treated as abandoned, was, upon terms, allowed to be restored.—*Ranee Hurrosoondree Debiah* v. *Rajah Pran Kishen Sing.* Vol. 6, p. 491.

A case must be very strong to justify such an unusual exercise of authority as the reversal by the Judicial Committee of the Privy Council of the decision of two Courts in India upon a mere question of fact.—*Cheyt Ram* v. *Chowdhree Nowbut Ram.* Vol. 7, p. 207.

The Court of the Judicial Committee of the Privy Council will undoubtedly be slow to interfere in any case before them in respect of any matter specifically within the power of a Jury, as, for example, the amount of damages; but, dealing, as the Court has to deal, with questions of fact as well as of law, they were not prepared to say that, in the case either of allowance or refusal of interest, in which they were clear that the Court below, acting either through prejudice or misunderstanding, had committed injustice, they would not recommend that an opportunity should be afforded of re-considering the matter by a new trial.—*Juggomohun Ghose* v. *Manickchund and another.* Vol. 7, p. 263.

The defendants, the Trustees and Managers of the Civil Service Annuity Fund, having moved for leave to appear

separately, as they had an interest distinct from the East India Company, the remaining defendants. *Held*, that, as the Trustees had put in a separate answer in the Court below, and the East India Company sought to fix them with the liability, they were entitled to appear and lodge a separate case.—*The East India Company* v. *Robertson and others.* Vol. 7, p. 361.

Upon an appeal coming on for hearing, the Court refused to hear the respondent's counsel unless a printed case was lodged.

Upon the respondents undertaking to lodge a case, the hearing of the appeal was adjourned.—*The Bengal Government* v. *Mussumat Shurruffut-oon-nissa and another.* Vol. 8, p. 225.

Every reference to the Law officers for their opinion, where it may bind a right, should embrace all important facts proved or admitted in the cause, which may affect the conclusion; and it is the duty of the Court itself, so to frame the questions, that they may elicit an opinion upon the very facts on which the legal title depends. If the facts be not ascertained, but stated and disputed, then the questions should embrace either view of the facts.

When the opinion given is apparently irreconcileable with the opinions of approved text writers, those who give the opinions should be asked further to explain that which appears *primâ facie*, thus irreconcileable, so that they may show on what they ground an apparent exception from the general law, whether on general custom modifying texts, or local usage, family customs, or other exceptional matter.—*Myna Boyee and others* v. *Ootaram and others.* Vol. 8, p. 400; *The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah.* Vol. 8, p. 529.

In a case of disputed facts, when they appear to have been proved and diligently investigated in the Court below, and the Court of the Judicial Committee of the Privy Council can find no palpable mistake in the appreciation by the Court below of the evidence, they never advise Her Majesty to reverse a decree which is brought before them under such circumstances.—*Chundermonee Debia Chowdhoorayn* v. *Munmoheenee Debia.* Vol. 8, p. 477.

Order made for the transmission to England of an original Persian deed, for inspection of certain defacements thereof, plaintiff's contention being that the document had been fraudulently altered by the defendants or those under whom they claimed, whilst the defendants alleged that the deed had been defaced by, or through the means of the plaintiff, and the Lower Courts having differed in their findings upon the question.—*Mussumat Khoob Conwur and others* v. *Baboo Moodnarain Singh and others.* Vol. 9, p. 1.

It is not the habit of the Court of the Judicial Committee of the Privy Council, unless in very extraordinary cases, to advise the reversal of a decision of the Courts in India merely on the effect of evidence or the credit due to witnesses. The Judges there have usually better means of determining questions of this description, and, when they have all concurred in opinion, it must be shown very clearly that they were in error in order to induce the Court of the Judicial Committee of the Privy Council to alter their judgment.—*Naragunty Lutchmeedavamah* v. *Vengama Naidoo.* Vol. 9, p. 66.

The respondent having died after the admission of an appeal, and Letters of administration with the Will annexed, of his estate having been granted to the Administrator-General of Bengal, it was directed that the appeal be revived against the Administrator-General of Bengal for the time being, and that the appeal be put in the same plight and condition as it was before the death of the original respondent.—*Gobind Chunder Sein* v. *Ryan.* Vol. 9, p. 140.

Whenever the opinion of Pundits is required and there are any special circumstances which may bear upon the question to be submitted for their opinion, those special circumstances ought to be set forth in the case submitted to them.—*Abraham* v. *Abraham.* Vol. 9, p. 195.

The Court of the Judicial Committee of the Privy Council will not apply to the pleadings in the Indian Courts, the strict rule that averments not traversed must be taken to be admitted.—*Mussumauth Anundmoyee Chowdhoorayan* v. *Sheeb Chunder Roy and others.* Vol. 9, p. 287.

It is not the course of the Judicial Committee of the Privy Council to dis-

turb the finding of the Courts below upon mere issues of fact, unless it is clearly satisfied that there has been some miscarriage, either in the reception, or in the appreciation of evidence.

In cases that turn upon the credibility of the testimony given, it is disposed to defer to the judgment of those, who, with the advantage of local experience, have had the means of seeing witnesses under examination, and of inspecting the original documents.—*Ghoolam Moortoozah Khan Bahadoor* v. *The Government.* Vol. 9, p. 456.

The Judge of a Zillah Court having pronounced in the strongest terms his opinion, that the appellant in the case was entitled, and that the case against him was a conspiracy, but, instead of stating the grounds upon which he arrived at that conclusion, confined himself to alleging that as his opinion, and that he had no doubt about it; it was considered that he had not afforded to the Court that assistance which it was entitled to expect, and which it was considered he was by the regulations bound to afford.—*Khajah Mohamed Gouhur Ali Khan* v. *Ashruf-oon-nissa and others.* Vol. 9, p. 492; *Khajah Mohamed Gouhur Ali Khan* v. *Khajah Ahmed Khan.* Vol. 9, p. 504.

Appellant, although served with peremptory notice to lodge his case, having taken no step to bring the appeal to a hearing, appeal dismissed with costs to be paid out of a sum of £300 deposited as security, the residue whereof was directed to be paid over to the appellant.—*Gour Monee Debia* v. *Khajah Abdool Gunnee.* Vol. 10, p. 59.

The Courts of Justice at Ganjam, situate in a remote and wild part of the Madras Presidency, governed by an officer called the Agent of the Governor of Madras, exercising both Judicial and Revenue authority, not being subject to the rules prescribed by the Government Regulations for the guidance of the tribunals in more settled and civilized parts of the country, it is not to be required or expected that their proceedings should be conducted with all the attention to technical rules which might be reasonably demanded from Courts differently constituted.

It is sufficient if the proceedings have been such, in point of form, as to enable each party fairly to bring forward and establish his case, and if the decision appears to be consistent with law and justice.—*Pakala Balakristnama Patrulu* v. *Sree Naraina Mardaraz Devu.* Vol. 10, p. 60.

The Court of the Judicial Committee of the Privy Council gave the appellant special leave to appeal from a decree of the High Court of Calcutta rejecting an appeal from a decree of the late Sudder Court, by which decree the Sudder Court had remanded the suit to be tried *de novo.* The appellant then applied to the High Court of Calcutta setting out the Order in Council allowing the appeal, and submitted, that the order for a trial *de novo* could not be carried out, but the High Court was of opinion that no sufficient ground had been shown for staying the further execution of the decree for remittal. Appellant, therefore, presented a petition to Her Majesty in Council praying that the proceedings in India might be stayed pending the appeal. The Court of the Judicial Committee of the Privy Council considered, that, as it was an *ex parte* application, novel in its circumstances and nature, the petition should be dismissed; but, that, if the petitioner desired it, his petition might stand over with a view to enable him to bring the respondent before the Court, by serving him in India; or, if the petitioner desired it, a fresh application could then be made. Petitioner's Counsel electing to adopt the latter course, it was ordered, that the petition be dismissed, without prejudice to any further application.—*Rajah Perladh Sein* v. *Baboo Bhoodoo Singh.* Vol. 10, p. 78.

When false witnesses or forged documents are produced in support of a case, the fact naturally creates suspicion as to the case itself; but when the Court has to deal with a just case foolishly and wickedly attempted to be supported by false evidence this misconduct must not mislead them in the advice they will have to tender to Her Majesty.—*Ranee Surnomoyee* v. *Maharajah Sutteeschunder Roy Bahadoor.* Vol. 10, p. 123.

The Court cannot by reason of the proof that a document adduced by one party is forged, transfer the property in which he, and those through whom he claims, have been in possession at the date of suit for forty-four years, to another, who has not establishd any right to it himself.—*Sevvaji Vijaya Raghu-*

nada Valoji Kristnan Gopalar v. *Chinna Nayana Chetti.* Vol. 10, p. 151.

An application was made by the appellant for an order, that the respondent, who was in possession as a decree-holder, under an execution order of the Court of Sudder Dewanny Adawlut of the North-Western Provinces, should give security for the protection of the property in suit, pending the appeal to England, the Sudder Court having refused to order the respondent to furnish such security, the application not having been made to it until the execution of the decree had been completed, holding, that Section 4 of Bengal Regulation No. XVI of 1797 did not contemplate the cases of decrees already executed. The Court of the Judicial Committee of the Privy Council, being of opinion, that it was expedient that sufficient security should be taken from the respondent for the due performance of such order and decree as Her Majesty might make on the appeal, and that, it was competent to the Sudder Dewanny Adawlut to require such security to be given, or otherwise to provide for the protection and security of the property in question pending the appeal, notwithstanding that execution had issued before the appeal was allowed, ordered, that the appellant be at liberty to apply to the Sudder Dewanny Adawlut for such security to be given, or such provision to be made, as they might admit.—*Mussumat Fariut-ool-Butool* v. *Mussumat Hoseinee Begum.* Vol. 10, p. 196.

On an application to stay proceedings in a suit instituted in the Zillah Court at Midnapore, in which an appeal had been interposed from an interlocutory order of the Sudder Court (afterwards the High Court) at Fort William in Bengal, and by that Court after a hearing and re-hearing remanded back to the Zillah Court, for trial on the merits. The Court of the Judicial Committee of the Privy Council decided, that, without going into the question with regard to their right or authority to stay proceedings, any application for a stay of proceedings must be founded on two points, which are essential to sustain the application; First, that a serious injury will be the result to the party applying unless the stay of proceedings is granted; and Secondly, that the party has come promptly to make the application for delay; and there being no pretence for saying that any such injury would arise in the case before the Court, and the petitioner not having made his application promptly, the same was dismissed with costs.—*Nawab Sidhee Nuzur Ally Khan* v. *Rajah Oojoodhyaram Khan.* Vol. 10, p. 322.

The Courts below, in appealable cases, by forbearing from deciding on all the issues joined, not unfrequently oblige the Judicial Committee of the Privy Council to recommend that a cause be remanded which might otherwise be finally decided on appeal, a serious evil to the parties litigant, as it may involve the expense of a second appeal as well as that of another hearing below. It is much to be desired, therefore, that, in appealable cases, the Courts below should, as far as may be practicable, pronounce their opinion on all the important points.

The Court observed with regret the frequent inclusion of voluminous papers, accounts, and receipts, in the transcripts printed in India, and sent over in that form to the registry of the Privy Council, an evil apparently on the increase, and the Court trusted, that the attention of the Courts in India, from which appeals were presented to Her Majesty, would be directed to the subject, with a view to provide a remedy for a very serious evil.—*Tarakant Bannerjee* v. *Puddomoney Dossee and others.* Vol. 10, p. 476.

When a plaintiff, on certain alleged facts, asks relief, and is unable to obtain a trial of the facts, and a hearing on the facts that he may establish, by reason of the conclusions of law which the Judge forms on the case in its then condition, justice requires that the Court should proceed upon the plaintiff's allegations.

The case must be determined as if it had arisen on a demurrer to a pleading or to evidence where such procedure exists.

Courts cannot be justified in refusing to allow cases to go to proof upon any other assumption than that the facts alleged are capable of proof, and are proved.

This assumption of the truth of the facts alleged must, however, be limited to the consideration of the legal effect of the facts alleged upon the bars raised against the trial of those facts.

The answers put in by the defendants

in such a case, can only be looked at for the purpose of ascertaining whether they raise the legal bars insisted on.—*Nawab Sidhee Nusur Ally Khan* v. *Rajah Oojoodhyaram Khan.* Vol. 10, p. 540.

It is an absolute necessity that the determinations in a cause should be founded upon a case either to be found in the pleadings, or involved in or consistent with the case thereby made.

It is impossible to conclude parties by inferences of fact which are not only not consistent with the allegations that are to be found in the plaint, which constitutes the case the defendant has to meet, but which are in reality contradictory of the case made by the plaintiff.

Where, therefore, the decision appealed from, was founded upon an assumed state of facts which was contradictory to the case stated in the plaint by the plaintiff, and devoid not only of allegation, but also of evidence in support of it, and the legal conclusion attempted to be derived from those facts was not consistent with the settled principles of law or equity, such decision was reversed.—*Eshenchunder Singh* v. *Shamachurn Bhutto and others.* Vol. 11, p. 7. See also *Shah Mukhun Lall and others* v. *Baboo Sree Kishen Singh and others.* Vol. 12, p. 157.

The proceedings in the Court of First Instance appearing to be wholly irregular, on account of that Court having gone into evidence without having first settled and recorded the points or issues in the suit, in conformity with the provisions of Act 8 of 1859, which, from the record transmitted, did not appear to have been done, the appeal was directed to stand over for the production of the certified proceedings, in order to see whether this had been done, or, in the alternative, that the cause should be remitted back to India, to be heard upon regular issues so framed.—*Baboo Rewun Pershad* v. *Jankee Pershad.* Vol. 11, p. 25.

The issue being one of fact, according to the ordinary course of the Judicial Committee, that Committee will not disturb the concurrent judgment of the two Courts below, unless they are satisfied that it is wrong.—*Meethun Bebee* v. *Busheer Khan and another.* Vol. 11, p. 213.

It would be inconsistent with the rules laid down by the Judicial Committee of the Privy Council for them to reverse a decision upon a question of fact unanimously arrived at by five Judges, unless the very clearest proof were adduced that that decision was erroneous.

A deed of assignment having been decreed to be a deed executed with intent to defraud and delay creditors, a portion of the decree which directed "That the said Indenture be retained by the Registrar for the purpose of being cancelled," ordered to be struck out, the plaintiff not being interested to cancel the deed as a whole, but only to remove the deed out of the way of the assertion of his own rights in regard to the property mentioned therein which he had purchased.—*Tareeny Churn Bonnerjee* v. *Maitland and another.* Vol. 11, p. 317.

In a suit upon a common money Bond, the plaintiff joined as defendants, with the alleged obligor, certain other persons, upon the allegation that they, in order that the money might be lost to him, had combined and got certain estates, belonging to the obligor illegally transferred to them, the Bond not purporting to be a mortgage or charge upon, or in any way referring to the estates in question, and the defendants alleged to have combined to procure the illegal transfer being no parties thereto. *Held*, that, the allegations that such defendants had combined with the plaintiff's alleged debtor to get the estates illegally transferred to them was no ground of suit against them; and that if the plaintiff could obtain judgment on his Bond and was not satisfied, he might possibly be entitled thereafter to raise such a case as that suggested in the plaint, but that any such proceedings before execution on the judgment were premature.

Though the Judicial Committee of the Privy Council is always disposed to give a liberal construction to pleadings in the Indian Courts, so as to allow every question fairly arising on the case made by the pleadings to be raised and discussed in the suit, yet this liberality of construction must have some limit.

A plaintiff cannot be entitled to relief upon facts or documents not stated or referred to in his pleadings.

Under the circumstances, the appellant was allowed to amend his plaint, so as to make it a plaint against the

debtor alone, for the recovery of the monies alleged to be due upon the Bond —*Mohummud Zahoor Ali Khan* v. *Mussumat Thakooranee Rutta Koer and others.* Vol. 11, p. 468.

Where mispleading has in no degree prevented the settlement of proper issues, or prejudiced the fair trial of the real question of right between the parties, it would be contrary to the practice of the Judicial Committee of the Privy Council to give effect to nice and critical objections founded on the inaccuracy of an Indian pleading.

There is nothing in the Code of Civil Procedure which expressly prohibits the Judges by whom an order allowing or rejecting an application for review of judgment is to be made from enlarging the grounds on which the review is applied for, on the oral application of the party, if satisfied that there is a proper case on the merits for so doing.

Even if the Court below has been wrong in its procedure, its miscarriage ought not to prevent the Court of the Judicial Committee of the Privy Council from deciding the question before it on its merits, there having been no surprise.—*Bhugwandeen Doobey* v. *Myna Baee.* Vol. 11, p. 487.

The Court of the Judicial Committee of the Privy Council will not depart from the usual course of not disturbing the concurrent judgments of the Courts below on a question of fact, if the facts, as found, are in truth decisive of the real issue between the parties.—*Rajah Burdacant Roy* v. *Baboo Chunder Coomar Roy and others.* Vol. 12, p. 145.

Such an unusual indulgence as the re-hearing of an appeal ought never to be granted except under very special circumstances, and only where the *ex parte* hearing has not been caused by any default in the party applying for a re-hearing.—*Ex parte Kisto Nauth Roy.* Vol. 12, p. 254.

In an *ex parte* appeal, involving substantially the same question, and turning on a decision pronounced in another case just decided by the Court of the Judicial Committee of the Privy Council, it was ordered that the decree be reversed, and the cause remitted to the High Court of Calcutta upon certain terms set forth in the order.—*Kaleepershad Tewarree* v. *Lalla Binda Lall.* Vol. 12, p. 343.

The Charter of the High Court of Madras, Section 42, expressly requires, that the reasons of their decisions should be recorded by the Judges, and transmitted for the information of the Judicial Committee of the Privy Council, and it was considered to be the subject of great regret, especially in an *ex parte* case, that the grounds of the judgment appealed from should be wanting in the record.—*Katchekaleyana Rungappa Kalakka Tola Oodiar* v. *Kachivijaya Rungappa Kalakka Tola Oodiar.* Vol. 12, p. 495.

When two Courts in India have arrived at the same conclusion, the Court of the Judicial Committee of the Privy Council is extremely reluctant to interfere with the discretion of those Courts, unless it can be shown that the Courts have acted upon an erroneous principle. — *The Bank of Hindustan, China and Japan* v. *The Eastern Financial Association.* Vol. 13, p. 15.

The Court of the Judicial Committee of the Privy Council will never disturb the concurrent decisions of both Courts below upon a question of fact, unless it very clearly appears that there has been some miscarriage of justice, some mistrial, or that the conclusion is very plainly erroneous.—*Goshain Tota Ram* v. *Rajah Rickmunee Bullub.* Vol. 13, p. 77.

Unless a finding of fact is unsupported by, or contrary to, the evidence, it is not the course of the Judicial Committee of the Privy Council to interfere with that finding, where two Courts are unanimous in their opinion.—*Inderun Valungypooly Taver* v. *Ramasawmy Pandia Talaver and another.* Vol. 13, p. 141.

Although the Judicial Committee of the Privy Council will not depart from the wholesome rule, that, unless they are clearly satisfied that the finding of two concurrent Courts in India upon a question of fact is wrong, such finding will not be disturbed, yet such rule will not apply where it appears, either that there has been no finding at all of the facts which it is necessary to find, or that those facts have been found in favor of the appellant.—*Moulvie Sayyud Ushur Ali* v. *Mussumat Bebee Ultaf Fatima and others.* Vol. 13, p. 232.

To proceed, so far as the practice of his Court will allow him, to recall and cancel an invalid order, is not simply permitted to, but is the duty of a Judge,

who should always be vigilant not to allow the act of the Court itself to do wrong to the Suitor. It would be a serious injury to the Suitor himself, to suffer him to attempt to execute an inoperative order.—*Syud Tuffuzzool Hossein Khan* v. *Rughoonath Pershad and another.* Vol. 14, p. 40.

In cases from Non-Regulation provinces, wherein the procedure is somewhat loose, and where the merits depend much upon local custom and local enquiry, it is even more necessary than it is on appeals from the decisions of the Civil Courts in the Regulation provinces, to act on the principle of not disturbing the judgment under appeal unless it is substantially wrong.—*Hyder Hossain* v. *Mahomed Hossain and another.* Vol. 14, p. 401.

See ACT 10 of 1859.
ALLUVIAL LANDS,
APPEAL,
APPEALABLE VALUE,
ARBITRATION,
BOUNDARY SUIT,
CONSOLIDATION OF SUITS AND APPEALS,
COSTS,
CROSS APPEAL,
DECREE,
DIGNITIES,
ESCHEAT,
EVIDENCE,
EXECUTION,
INSOLVENCY,
ISSUES,
JURISDICTION,
LA KHIRAJ LANDS,
LIEN,
LIMITATION,
LOCAL ENQUIRY,
MAINTENANCE,
MESNE PROFITS,
MULTIFARIOUSNESS,
NEW SUIT,
NEW TRIAL,
NON-SUIT,
RES JUDICATA,
REVIEW OF JUDGMENT,
SALE UNDER DECREE,
SECURITY FOR COSTS,
SEQUESTRATION,
SPECIAL LEAVE TO APPEAL,
UNAVOIDABLE ACCIDENT,
UNDERTAKING,
VARIED.

PREAMBLE OF STATUTE.

See JURISDICTION.

PRECATORY TRUS

See MOHUNT.

PRECLUDED.

See LIMITATION.

PREFERENCE.

See HINDOO LAW,
INSOLVENCY.

PREROGATIVE.

See APPEAL,
CROWN,
SOVEREIGN POWER.

PRESCRIPTION.

See CUSTOM,
LIMITATION,
PALKI HUQ,
TORAS GARAS.

PRESUMPTION.

See ACQUIESCENCE,
ADOPTION,
ALLUVIAL LANDS,
BENAMEE,
BOUNDARY SUIT.
CUSTOM,
DIVORCE,
ENHANCEMENT OF RENT,
EVIDENCE,
FAMILY USAGE OR CUSTOM,
FRAUD,
HEREDITARY OFFICES,
JOINT UNDIVIDED HINDOO FAMILY,
LA KHIRAJ LANDS,
LEGITIMACY,

PRESUMPTIVE HEIR.

A question having been raised as to the right of a person who was a presumptive heir in reversion, to question a deed of sale executed by women having only the limited interest of Hindoo females in property which they took either from their husband or their sons. The Court of the Judicial Committee considered, that had it been necessary to decide the point, the Court would have found it extremely difficult to overrule the many cases in which that right has been more or less recognized.—*Raj Lukhee Dabea* v. *Gokool Chunder Chowdhry*. Vol. 13, p. 209.

PRIMOGENITURE.

Judgment of the High Court of Madras, that, as regards the rights of sons by different wives, to inherit, whether in coparcenary or as sole heir, (except, perhaps, the son of the first wife,) the priority in point of time of their mothers' marriages, has never been regarded when the wives were equal in caste and rank, and that the rule of primogeniture was, and is, the same in the case of sons by several wives of equal caste and rank, as in the case of sons by one wife, Upheld.—*Ramalakshmi Ammal* v. *Sivanantha Perumal Sethurayar*. Vol. 14, p. 570.

See ANCESTRAL PROPERTY,
FAMILY USAGE OR CUSTOM,
RAJ,
ZEMINDAR.

PRINCIPAL AND AGENT.

A plaintiff suing upon certain Bills of Exchange alleged to have been drawn by the Gomastah of the defendant. *Held*, not to have made out his case for the recovery of the amount of such Bills of Exchange, by proving that the alleged Gomastah was such, or had authority to act as the agent of the person for whom he professed to act.—*Madho Row Chinto Punt Golay* v. *Bhookundas Boolakidas*. Vol. 1, p. 351.

If an agent with direct authority and positive directions to bid at an auction and to purchase an estate, does, in the execution of that authority, so bid, and has the estate knocked down to him, also, collaterally, and in a bye-manner, enters into a distinct and separate contract with a person, that, in consequence of something to be done or to be forborne, pledges his principal to pay to that individual a certain sum, the principal will not be bound by this bye-transaction on the part of the agent.

If an agent having a definite authority makes a contract on the part of his principal, and exceeds that authority by inserting a term in the contract itself, it will not be competent to the principal to say, "I will repudiate the inserted "term in the contract, as being *ultra* "*vires* and unauthorized, but I will ob-"tain performance of the rest of the "contract."

In such a case, although the agent has no authority for the additional term, yet, as it is an integral part of the contract itself, and the party selling was not aware of the want of authority, the principal could not enforce that contract without giving effect to the additional term. But, in the other case, the act of the agent, if effect were given to it, would subject the principal not only to the contract which he authorized, and which he might be required by the vendor or lessor to fulfil, but also to an additional liability which he never contemplated.—*Eshenchunder Singh* v. *Shamachurn Bhutto and others*. Vol. 11, p. 7.

See AGENT,
FACTOR,
NEGOCIABLE INSTRUMENT.

PRINCIPAL AND SURETY.

Respondent, by drawing certain Bills of Exchange, undertook, if the acceptors failed to pay, to make payment himself, and at the times when the bills were drawn, the appellants, who negociated

the same, held no securities belonging to the acceptors, the engagement entered into by the respondent to pay the amount of the bills, if not paid by the acceptors, being wholly unconnected with any question of security. The appellants subsequently advanced to the acceptors certain further and other sums, to secure re-payment of which and of all other sums which might be then or thereafter due to them, the appellants, obtained from the acceptors, as collateral security, deposits of goods, with instruments of hypothecation authorizing them in default of payment to sell and dispose of such goods, and out of the proceeds thereof to re-pay themselves all monies then due to them by the acceptors, handing over the surplus, if any, to the acceptors, the instruments of hypothecation not directing that the goods or proceeds should be applied preferentially in payment of any particular debt. The acceptors subsequently became insolvent, and the appellants handed over to their assignees the said goods, upon re-payment to them by such assignees of the specific sums for which the goods were pledged. *Held*, that, returning the goods to the assignees on payment of their full value, which the Court assumed to be the case, was a disposition of the same fairly within the terms of the instruments of hypothecation, which gave the appellants the right to sell and dispose of the same by public or private sale. That such a disposition was a sale in all essential particulars. That the respondent was not entitled to an injunction to restrain the appellants from proceeding to enforce payment by him of the bills drawn by him, on the grounds that the collateral securities held by the appellants were liable as well for the debts due by the acceptors previously to their deposit, as for those incurred at the time, and that the appellants by permitting the redemption of them, after a notice served on them by the respondent directing them not to do so until payment of the bills drawn by the respondent, as well as the sums for which the securities were specifically pledged, and without the respondent's assent, he, the respondent, had been released from all liability in respect of the bills drawn by him, or, at least to the extent of any surplus value thereof, beyond the amount for which they were specifically pledged and deposited, there being no proof whatever of an allegation contained in the respondent's bill that he was induced to execute the bills sued upon in consequence of the deposits of goods made by the acceptors with the appellants, and That the appellants were not bound to apply the proceeds of the goods *pari passu* towards the liquidation of all the debts due to them by the acceptors, including the bills drawn by the respondent.—*The Bank of Bengal* v. *Radakissen Mitter*. Vol. 3, p. 19.

PRINTED CASE.

See PRACTICE.

PRIORITY.

See DOWER.

PRIVATE PROPERTY.

See SOVEREIGN POWER.

PRIVATE SALE AFTER ATTACHMENT.

See SALE AFTER ATTACHMENT, SALE FOR ARREARS OF REVENUE.

PRIVITY OF CONTRACT.

See LEASE.

PROBATE.

See WILL.

PROCEDURE.

See LIMITATION, PRACTICE.

PROCEEDING TO KEEP DECREE ALIVE.

See EXECUTION, LIMITATION.

PROCTOR.

See ATTORNEY.

PROFESSIONAL MISCONDUCT.

See ADVOCATE.

PROFITS.

A plaintiff having failed to account for certain profits, was, by the Court below, charged with interest on the principal sum for which he was accountable at the rate of twelve per cent. per annum. *Held*, that, it was right to call upon the plaintiff to bring into account such profits, and that, under the circumstances, it was competent to the Court to charge the plaintiff with interest in lieu of the profits for which he had failed to account.—*Ram Pershad Tewarry* v. *Sheo Churn Doss and others; Sheo Churn Doss* v. *Ram Pershad Tewarry*; *Mussumat Thookra* v. *Ram Pershad Tewarry*. Vol. 10, p. 490.

See INTEREST,
WASILAT,
WILL.

PROMISE TO PAY.

See LIMITATION.

PROPERTY.

A mere right of suit is not *property* (within the meaning of the 205th Section of Act 8 of 1859,) but a title to recover future property.

A debt, or property, which is seizable, or may be attached, does not lose those qualities merely by being the subject of a pending suit.—*Syud Tuffuzzool Hossein Khan* v. *Rughoonath Pershad and another*. Vol. 14, p. 40.

PROPRIETOR.

See CONSTRUCTION.

PROSTITUTE.

See MARRIAGE.

PROTECTION OF OFFICIALS.

See OFFICIALS,
TRESPASS.

PUBLIC OFFICERS OR SERVANTS.

See CHAKERAN LANDS,
MASTER IN EQUITY,
MINOR,
OFFICIALS,
TORT.

PUBLIC POLICY.

See ASSIGNMENT,
CHAMPERTY,
GIFT OVER,
ISSUES,
WAGER CONTRACT.

PUBLIC PROPERTY.

See SOVEREIGN POWER.

PUBLIC REGISTERS.

See EVIDENCE.

PUBLIC RIGHT.

See LIMITATION.

PUFFING.

See WAGER CONTRACT.

PUNDITS.

The opinion of a Pundit which is found to be in conflict with the translated works of authority may reasonably be rejected; but, those which are consistent with such works, should be accepted as evidence that the doctrine which they embody has not become obsolete, but is still received as part of the customary law of the country.—*The Collector of Madura* v. *Moottoo Ramalinga Sathupathy*. Vol. 12, p. 397.

See PRACTICE.

PURCHASER.

The proposition that no difference is to be made between an innocent purchaser and one tainted by a fraud which has brought about an execution sale is wholly untenable. The question is, in the former case, which of two innocent parties shall suffer; in the latter whether he who has wronged the other party shall be allowed to enjoy the fruits of his wrong doing. A Court exercising equitable jurisdiction may withhold its hand in the one case, and yet set aside the sale with or without terms in the other.—*Lalla Bunseedhur* v. *Koonwur Bindeseree Dutt Singh*. Vol. 10, p. 454.

See COMPENSATION,
ENHANCEMENT OF RENT,
MORTGAGE,
SALE AFTER ATTACHMENT,
SALE FOR ARREARS OF REVENUE,
SALE UNDER DECREE,
STOPPAGE IN TRANSITU,
TALOOKDARY TENURE,
TITLE.

PURCHASER UNDER JUDGMENT DECREE.

See LIMITATION.

PURCHASE MONEY.

See BENAMEE.

PURDAH WOMEN.

The Judicial Committee of the Privy Council, and the Courts of India, have always been careful to see that Deeds taken from *Purdah* women have been fairly taken; and that the party executing them has been a free agent, and duly informed of what she was about.

When the disposition is in the nature of a death-bed disposition, the Court that upholds it ought, from whomsoever it proceeds, to be satisfied that it was the free voluntary act of the party by whom it purports to have been executed, and expresses his real intentions.—*Geresh Chunder Lahoree* v. *Mussumat Bhuggobutty Debia and another.* Vol. 13, p. 419.

See HUSBAND AND WIFE.

PUT.

See ADOPTION.

RAJ.

By the general law prevailing in the districts of *Tirhoot* and *Purneah*, and indeed generally under the Hindoo Law, estates are divisible amongst the sons, when there are more than one son. They do not descend to the eldest son, but are divisible amongst all. With respect to a *Raj* as a principality, the general rule is otherwise, and must be so. It is a sovereignty, a principality, a subordinate sovereignty and principality no doubt, but still a limited sovereignty and principality, which in its very nature excludes the idea of division.

There is no doubt that the general law with respect to inheritance, as well as with respect to other matters, may, in the case of great families where it is shown that usage has prevailed for a long series of years, be controlled, unless there be positive law to the contrary.

The Zemindary in suit held to be an undivisible *Raj;* and that the reigning Raja had the power of abdicating, and by deed assigning the *Raj* in favor of his eldest son, or next immediate male heir.—*Baboo Gunesh Dutt Singh* v. *Maharaja Moheshur Singh and others.* Vol. 6, p. 164.

The title of Rajah is not absolutely essential to the tenure of a *Raj.*

There having been a virtual confiscation of the interest of one *Rajah Futteh Sahee* and his descendants in the *Raj* of *Hunsapore,* up to that time an impartible *Raj,* which, by family custom, descended on the death of each successive Rajah to his eldest male heir—according to the rule of primogeniture—who took the whole, subject to the obligation of making to the junior members of the family, certain allowances by way of maintenance, called *Babooana* and the Government having not only persistently treated the estate of *Rajah Futteh Sahee* as forfeited, and refused to recognize any claim on the part of his descendants, but having for more than twenty years applied the revenue to its own purposes, and having also held itself at liberty to make a fresh grant of the estate, imposing new conditions upon the tenure, and, who, though holding itself at liberty to dispose of the property by sale, as a matter of grace and favor, had finally conferred it upon one *Chutterdharee Sahee,* the representative of a younger branch of the family, and put him, then a minor, in possession, subsequently conferring upon him the title of *Maharajah. Held,* that, for the purposes of the suit before the Court, it must be taken for granted that *Chutterdharee Sahee* derived his title by grant from the East India Company, which had full dominion over the estate, and, therefore, the power to grant it; and that the estate must be taken to be the separate and self-acquired property of

Chutterdharee Sahee. That, in the absence of all evidence to the contrary, it must be presumed that the settlement was made precisely as it would have been made had the estate continued in the line of *Rajah, Futteh Sahee*, and, therefore, that the subject conferred on *Chutterdharee Sahee*, was, the old Zemindary with all its incidents, excepting, at most, its descendible quality; and that the intention to alter that quality, if it existed, would have been expressed. That the right of succeeding to the estate from *Chutterdharee Sahee* was to be governed by the law or custom which regulated the descent in the time of his ancestors. And that the transaction was not so much the creation of a new tenure as the change of the tenant by the exercise of a *vis major.—Baboo Beer Pertab Sahee* v. *Maharajah Rajender Pertab Sahee*, and *Maharajah Rajender Pertab Sahee* v. *Baboo Beer Pertab Sahee.* Vol. 12, p. 1.

See EVIDENCE,
JOINT UNDIVIDED HINDOO FAMILY,
JUDGMENT IN REM,
POLLIAM TENURE,
SOVEREIGN POWER,
SUCCESSION,
ZEMINDAR.

RAJAH.

See RAJ,
SOVEREIGN POWER.

RAJPOOTS.

See KHATRI CASTE.

See GOVERNMENT OFFICER,
MORTGAGE,
SALE FOR ARREARS OF REVENUE,
SOVEREIGN POWER.

RATING.

The test or definition afforded by Section 1 of the Statute 6 and 7, Will. 4, Cap. 96, in the words "the net annual value of the several hereditaments rated thereunto, that is to say, of the rent at which the same might reasonably be expected to let, from year to year, free from all usual tenants' rates and taxes, and to the commutation rent charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent," seems substantially a correct test or definition to be applied under the Statute 33, George 3, Cap. 52.

If of two manufacturers in the same street, carrying on precisely the same kind of business, by means of fixed machinery, one makes an annual profit of £2,000, and the other an annual profit of only £1,000; that circumstance, if the respective buildings and machinery do not materially differ in size, description, extent, or quality, cannot render the one liable to be assessed at a higher rate than the other.

The greater or less degree of success with which a trade or manufacture is conducted in a warehouse, or manufactory, or other building, having or not having fixed machinery, depends on many and various contingencies, and circumstances, of a nature foreign to the mere capabilities of the warehouse, manufactory, or building, and cannot form a just ingredient in any calculation of its true and annual value.—*Fawcett and others* v. *The Justices of Bombay.* Vol. 3, p. 408.

RAZEENAMAH.

In consequence of disputes between two brothers as to their respective rights upon partition under a compromise made and a *Razeenamah* and *Ikrarnamah* entered into, a question arose, "Whether "*Hetnarain Singh* and *Modnarain Singh* "were entitled to the annual sum of "Rupees 17,212-9-5, in the proportions "of nine-sixteenths and seven-sixteenths "respectively, in accordance with the "contention of *Hetnarain Singh*, or in "the proportions of the amounts of "sudder jumma payable by them re-"spectively on account of the nineteen "Mehals in the pleadings mentioned, "in accordance with the contention of "*Modnarain Singh.*" *Held*, that, the Rupees 17,212 were divisible between the brothers in the proportion of nine-sixteenths and seven-sixteenths, and that, in whatever mode the Government might think proper to deal with this sum with reference to the

jumma, the rights of the parties could not be affected without their consent, but would continue to be adjusted according to the proportions originally established.—*Maharanee Inderjeet Kooar* v. *Mussumath Ismudh Koonwur and another.* Vol. 10, p. 329.

RE-ADMITTING APPEALS.

See PRACTICE,
SPECIAL LEAVE TO APPEAL,
UNAVOIDABLE ACCIDENT.

REAL PROPERTY.

See ALIENS,
TENURE.

RE-ASSESSMENT.

See ENHANCEMENT OF RENT.

RECITALS.

See EVIDENCE.

REDEMPTION.

See MORTGAGE.

REFERENCE TO ARBITRATION.

See ARBITRATION.

REGISTERS, PUBLIC.

See EVIDENCE.

REGISTRATION.

In a suit brought by the appellant to get, amongst other things, her name recorded in the Collectorate under Bengal Regulation No. VIII of 1800, Section 21, as the owner of certain landed property sold, and by deed conveyed to her, by her father, whose brother, one of the respondents, amongst other things, urged, that, under the terms of a certain deed of partition, the father had no power to make any such sale, and was only empowered to sell under circumstances of urgent necessity, which he was bound to prove. *Held*, that, by the clauses contained in the partition deed, the father was entitled to alienate the property in question, and that the appellant was entitled to have her name put upon the register, but that such order would be without prejudice to any other question of title or right that might be raised against the appellant, or her representatives, in any other suit, or proceeding.—*Ranee Cowulbas Koonwur* v. *Baboo Loll Bahadoor Singh and others.* Vol. 9, p. 39.

By Act 19 of 1843, it was provided, "that from the first day of May last "past, every deed of sale, or gift of "lands, houses, or other real property, a "memorial of which has been or shall be "duly registered according to law, shall, "provided its authenticity be established "to the satisfaction of the Court, in- "validate any other deed of sale or gift "for the same property which may not "have been registered, and whether "such second or other deed shall have "been executed prior or subsequent "to the registered deed—and that from "the said day every deed of mortgage "on land, houses, and other real pro- "perty, as well as certificates of the "discharge of such incumbrances, a memorial of which has been or shall be duly registered according to law, and provided its authenticity be established to the satisfaction of the Court, shall be satisfied in preference to any other mortgage on the same property which may not have been registered, and whether such second or other mortgage shall have been executed prior or subsequent to the registered mortgage, any knowledge or notice of any such unregistered deed or certificate alleged to be had by any "party to such registered deed or certi- "ficate notwithstanding." *Held*, that, the words *any knowledge or notice of any such unregistered deed or certificate alleged to be had by any party to such registered deed or certificate notwithstanding* apply not only to deeds and certificates of mortgage, but also to deeds of sale or gift. That the word *authenticity* in the proviso to the effect, that the authenticity of the deed be established to the satisfaction of the Court, would seem, according to its natural meaning, to point merely to the exclusion of a forged deed from the benefit of the Act. That it could not be intended by the Act that a deed which was tainted by fraud, although in other respects genuine, should be placed on the same footing as an honest and *bonâ fide* deed, and That at all events a registered deed cannot be deprived of the priority given by

the Act, unless it be both alleged and proved that there was fraud on the part of the grantee.—*Sreenanth Bhuttacharjee* v. *Ramcomul Gungopadya and others.* Vol. 10, p. 220.

The only question raised by the appeal being, whether a certain unregistered agreement could be received in evidence under the Registration Act 20 of 1866, Clause 2, Section 17 and Section 49. *Held,* that, the instrument in question was one which by Clause 2 of Section 17 of that Act required to be registered; that it was an instrument acknowledging the payment of the consideration money for what was ultimately to be an absolute sale of the property in question, and what in equity would operate as a sale of the property; and further, that the appellant having failed to pursue the remedies given him by the 84th Section of the Act, or at least to exhaust those remedies, upon Registration being refused, it was impossible to say, that, acting under the provisions of a very useful, though stringent Act, the Judges of the High Court of Calcutta had miscarried in ruling that the instrument, not having been registered, was inadmissible in evidence; and that the plaintiff's suit had, on that ground, wholly failed.

Where the Sub-Registrar, and afterwards the Registrar, refused to register an instrument because one of the parties by whom it purported to be executed, denied that he had executed it, the Court of the Judicial Committee of the Privy Council looking to the words of the 84th Section of the Act, and the form of the petition given in the schedule, was of opinion that the Zillah Judge would have jurisdiction under the Act to determine such a question; that power being expressly given to summon the parties the Court imagined that there would be also power to summon witnesses, if examination of witnesses should be necessary; and that it seemed reasonable to suppose, that, if a *primâ facie* case of execution of the deed was made out, registration of the document would be directed, and the parties be referred to try the question of forgery or non-forgery in a regular suit.

Such a decision would not finally bind the rights of the party denying the execution of the document, and, on the other hand it would not preclude the opposite party from proving, in a less summary proceeding, that the denial was false.—*Futteh Chund Sahoo* v. *Leelumber Singh Doss and others.* Vol. 14, p. 129.

Registration of landed property in the name of one member of a family is not conclusive against the claim of those who might contend that they had nevertheless continued to retain a joint interest in the property.—*Hyder Hossain* v. *Mahomed Hossain and another.* Vol. 14, p. 401.

See ANCESTRAL PROPERTY,
CONFISCATION,
CUTTOOGOOTAGA TENURE,
EVIDENCE,
JOINT UNDIVIDED HINDOO FAMILY,
LIMITATION,
TITLE.

REGISTRATION IN THE NAME OF ONE MEMBER OF A FAMILY.

See ANCESTRAL PROPERTY,
CONFISCATION,
JOINT UNDIVIDED HINDOO FAMILY,
REGISTRATION.

REGRATING.

See WAGER CONTRACT.

REGULATIONS, BENGAL.

No. III OF 1793.

See CHAKERAN LANDS,
GHATWALLY TENURE.

No. III OF 1793.

See CAUSE OF ACTION,
LIMITATION,
MORTGAGE.

No. IV OF 1793.

See MAHOMEDAN LAW,
PRACTICE.

No. VIII OF 1793.

See CHAKERAN LANDS,
ENHANCEMENT OF RENT,
NUMUK SAYER MEHALS.

No. XI OF 1793.

See FAMILY USAGE OR CUSTOM.

No. XV OF 1793.

See INTEREST,
MORTGAGE,
USURY.

No. XIX OF 1793.

See LA KHIRAJ LANDS.

No. XXXVII OF 1793.

See EVIDENCE.

No. XLIV OF 1793.

See ENHANCEMENT OF RENT.

No. XLV OF 1793.

See SALE UNDER DECREE.

No. XX OF 1795.

See SALE FOR ARREARS OF REVENUE.

No. XI OF 1796.

See CONFISCATION.

No. XVI OF 1797.

See PRACTICE.

No. VIII OF 1800.

See REGISTRATION.

No. X OF 1800.

Bengal Regulation No. X of 1800, does not apply to undivided *Zemindaries*, in which a custom might prevail that the inheritance should be indivisible, but only to the *Jungle Mehals*, and other entire districts where local custom prevails.—*Rajah Deedar Hossein* v. *Ranee Zuhoor-oon-nissa*. Vol. 2, p. 441.

No. II OF 1803.

See LIMITATION.

No. LII OF 1803.

See DISQUALIFIED LANDHOLDER.

No. II OF 1805.

See LA KHIRAJ LANDS,
LIMITATION,
MORTGAGE.

No. XVII OF 1806.

See MORTGAGE.

No. V OF 1812.

See ENHANCEMENT OF RENT,
SALE FOR ARREARS OF REVENUE.

No. XVIII OF 1814.

See SALE FOR ARREARS OF REVENUE.

No. XXVI OF 1814.

See MORTGAGE,
PRACTICE.

No. II OF 1819.

See LA KHIRAJ LANDS.

No. VIII OF 1819.

See LIMITATION,
SALE FOR ARREARS OF RENT.

No. I OF 1821.

See LIMITATION.

No. VII OF 1822.

See AWARD,
LIMITATION.

No. XI OF 1822.

See ENHANCEMENT OF RENT,
SALE FOR ARREARS OF REVENUE,
TALOOKDARY TENURE.

No. VII OF 1825.

See SALE UNDER DECREE.

No. IX OF 1825.

See AWARD,
LIMITATION.

No. XI OF 1825.

See ALLUVIAL LANDS.

No. XIV OF 1825.
See LA KHIRAJ LANDS.

No. III OF 1828.
See LA KHIRAJ LANDS,
SOONDERBUNS,
WASILAT.

No. X OF 1829.
See APPEALABLE VALUE.

No. XIV OF 1829.
See SECURITY FOR COSTS.

No. IV OF 1831.
See ENHANCEMENT OF RENT.

No. V OF 1831.
See MOONSIFF.

No. VI OF 1831.
See JURISDICTION.

No. IX OF 1833.
See AWARD,
LIMITATION.

REGULATIONS, MADRAS.

No. II OF 1802.
See INTEREST.

No. XVII OF 1802.
See EVIDENCE.

No. XXV OF 1802.
See CUTTOOGOOTAGA TENURE.

No. XXXIV OF 1802.
See INTEREST.

No. XV OF 1816.
See ISSUES,
NEW SUIT.

No. VIII OF 1818.
See PRACTICE.

No. IV OF 1831.
See ENHANCEMENT OF RENT.

REGULATIONS, BOMBAY.

No. I OF 1800.
See LIMITATION.

No. II OF 1800.
See COSTS.

No. V OF 1827.
See LIMITATION,
PALKI HUQ.

No. VII OF 1827.
See ARBITRATION.

No. XXIX OF 1827.
See JURISDICTION.

RE-HEARING OF APPEAL.

See PRACTICE.

REJECTION OF EVIDENCE.

See EVIDENCE.

RELIGION.

See GUARDIAN AND WARD.

RELIGIOUS CEREMONIES.

See EVIDENCE,
HINDOO LAW.

RELIGIOUS ENDOWMENT.

See SEBAIT.

RELIGIOUS RIGHTS.

See CUSTOM,
NEW SUIT.

RELIGIOUS TRUST.

In a suit framed to get red of various alienations by, and dealings of the defendants, with certain lands, which were admitted by a partition deed, and by previous deeds of dedication which that partition confirmed and gave effect to,

to have been set apart for the maintenance of the joint family worship, and to have the plaintiff's share in the lands so dedicated, made over to him to maintain *pro tanto* for the purposes of the family worship; the defendant's answer setting up that a later partition had altered the disposition of the family property made by the former partition, and the previous endowment deeds, and that the estate, though dedicated for family worship by the first, had been desecrated by the second partition, and passed thereunder to two of the defendants for their separate use. *Held*, that, the title being one founded on trust, and the contention of the holders being, that it was not now in their hands subject to the trusts, *primâ facie* at least, attaching to it, the *onus* of the proof was on them, and that they had not discharged themselves of it; and that the lands were and continued dedicated to the religious uses specified in certain instruments of endowment.

A family trust of this nature has never in modern times, at least, been held to require the assent of the State. —*Juggut Mohini Dossee and others* v. *Mussumat Sokheemoney Dossee and others*. Vol. 14, p. 289.

RELIGIOUS USES OR PURPOSES.

See LA KHIRAJ LANDS,
SEBAIT,
WIDOW.

REM, JUDGMENT IN.

See JUDGMENT IN REM.

REMAINDER.

See GIFT OVER,
WIDOW.

REMAND.

See TROVER.

RENEWAL OF BOND.

See NOVATION.

RENT.

An appellant in possession who was bound to keep accounts of his receipts, not producing any such accounts, held to be properly chargeable with the full rents.—*Soondur Koomaree Debbeea* v. *Gudadhur Pershad Tewarree* and *Gudadhur Pershad Tewarree* v. *Soondur Koomaree Debbeea*. Vol. 7, p. 54.

See ENHANCEMENT OF RENT,
LIMITATION,
SALE FOR ARREARS OF RENT,
TALOOKDARY TENURE,
UNDER TENANTS,
WASILAT.

RENT-FREE TENURES.

See EVIDENCE.

RE-OPENING ACCOUNTS.

See ACCOUNT STATED.

REPRESENTATIVES.

See LEASE.

REPRESENTATION BY AGENT.

See EVIDENCE.

RESCINDING CONTRACT.

See INSOLVENCY.

RESERVATION.

See GIFT INTER VIVOS.

RES JUDICATA.

In 1845, the appellant purchased a moiety of a dock at Bombay, from a person named *Sherasee*, and a conveyance was made of that moiety, in consideration of a sum of money, partly then owing, and partly paid as a further consideration for the purchase. The purchaser entered into possession of his moiety, jointly with the proprietors of the other moiety, and they, together, let the dock to the Peninsula and Oriental Steam Navigation Company, part of the agreement being, that the dock was to be kept in repair, and that the Peninsula and Oriental Steam Navigation Company were to be at liberty to deduct out of the rent any sums paid by them for repairs. The appellant alleged that he expended large sums on account

of repairs, no portion of which was contributed by the other tenants in common. In November 1846, a decree was made against *Sherazee* for the payment of a large sum of money in a suit which had been instituted against him, and under the proceedings in that suit, the sequestrator took possession of the dock as being the property of *Sherazee*. The appellant presented to the Court making the decree a petition for the purpose of supporting and making out his right, title, claim and interest in and to the dock and its appurtenances in opposition to the claim made by the sequestrator. *Held*, that, if the appellant did not inform the Court in the suit then before it what order was made upon the petition he must take the consequences, and it must be assumed that it was an order which entirely disallowed the claim, or allowed him to take some proceeding which he had not thought fit to adopt; and the Court affirmed an Order of the Lower Court allowing a general demurrer for want of equity filed by the respondents to a bill filed by the appellant in a new suit, and which demurrer had been allowed on the ground that the proceeding by the bill was an attempt to re-agitate a claim which had been previously disposed of by the Court, and was, therefore, *res judicata*. —*Musadee Mahomed Cazum Sherazee* v. *Meerza Ally Mahomed Shoostry and another*. Vol. 5, p. 187.

Where the appellant in a former suit, in which he might have insisted upon the validity of a certain Will, instead of doing so, when his suit came on to be heard and decided in the Court of final appeal, in effect disclaimed all title under the instrument as a Will, and insisted that it must be regarded by the Court as not being testamentary. *Held*, that, there would be an end to all security in the administration of justice if the appellant were allowed to set up the Will in a subsequent suit brought to establish the genuineness and validity thereof.

When a plaintiff claims an estate, and the defendant, being in possession, resists that claim, he is bound to resist it upon all the grounds that it is possible for him, according to his knowledge, then to bring forward.—*Srimut Rajah Moottoo Vijaya Raganadha Bodha Gooroo Sawmy Periya Odaya Taver* v. *Katama Natchiar and another*. Vol. 11, p. 50.

See CAUSE OF ACTION,
JUDGMENT IN REM,
NON-SUIT,
WILL.

RESTITUTION OF CONJUGAL RIGHTS.

Upon consideration of the question, whether, with reference to the limitation in the Bombay Charter of December 1823, with regard to the Ecclesiastical jurisdiction of the Supreme Court of Bombay, *as far as the circumstances and occasion of the said people shall admit or require*, it was consistent with that limitation for the Ecclesiastical side of the Supreme Court at Bombay to entertain a suit for the restitution of conjugal rights at the instance of a Parsee wife against her husband. *Held*, that, a suit for the restitution of conjugal rights, strictly an Ecclesiastical proceeding, cannot, consistently with the principles and rules of Ecclesiastical Law, be applied to parties who profess the Parsee religion.—*Ardaseer Cursetjee* v. *Perozeboye*. Vol. 6, p. 348.

A Mussulman husband may institute a suit in the Civil Courts in India, for a declaration of his right to the possession of his wife, and for a sentence that she return to cohabitation; and the suit must be determined according to the principles of the Mahomedan Law.

If cruelty, in a degree rendering it unsafe for the wife to return to the husband's dominion is established, the Court may refuse to send her back.

It may be, that gross failure by the husband in the performance of the obligations which the marriage contract imposes on him, for the benefit of the wife, may, if properly proved, afford good grounds for refusing him the assistance of the Court.

There may be cases in which the Court will qualify its interference, by imposing terms on the husband.

But, all these questions should be carefully considered, and considered with some reference to Mahomedan Law.—*Moonshee Busloor Ruheem and another* v. *Shumsoonnissa Begum*. Vol. 11, p. 551.

RESTORATION OF APPEAL.

See APPEAL,
PRACTICE,
SPECIAL LEAVE TO APPEAL,
UNAVOIDABLE ACCIDENT.

RESULTING TRUST.

The very principle of a resulting trust is, that the property has been purchased with money belonging to another, with an implied trust that it should belong to that other person.

But, if it was the intention of the person to whom the money belonged that there should be no such trust, then, of course, no such implied trust could arise, because it is only a trust by implication, and the presumption would then be met by the facts.—*Mussumat Ameeroonnissa Khanum and another* v. *Mussumat Ashrufoonnissa*. Vol. 14, p. 433.

See ANNUITY.

RESUMPTION OF LANDS.

The regulations respecting the resumption of lands, and the subjecting them to be assessed, are regulations in themselves almost necessarily severe in their operation; and whilst Courts give to them the force and effect which they are bound to do, as the subsisting law on the subject, it ought not to be forgotten that though it is manifestly, at first sight, the interest of Government to bring under taxation as large an extent of land as possible, yet it is equally the interest and the duty of Government to protect the rights of property; for, if such rights be not protected, there can be no security for the prosperity of any country; and full force and effect should be given to those provisions which were manifestly intended to protect the rights of property, and prevent a vexatious interference with those rights.—*Maharajah Moheshur Sing* v. *The Bengal Government*. Vol. 7, p. 283.

In every case the right to resume must depend in a great measure upon the nature of the particular tenure, or the terms of the particular grant.

There is a clear distinction between the grant of an estate burdened with a certain service and the grant of an office the performance of the duties of which are remunerated by the use of certain lands.

The grant may be so expressed as to make the continued performance of the service a condition to the continuance of the tenure, but, in such a case, either the continued performance of the service would be the whole motive to, and consideration for, the grant, or the instrument would, by express words, declare, that, the service ceasing, the tenure should determine.

Held, that, certain sunnuds were not of the kind last mentioned; and that the grant might be said to have been made *pro servitiis impensis et impendendis*, partly as a reward for past, partly as an inducement for future services; and that the sunnuds contained no words which expressly imported that the tenure should cease if and when any of the services ceased to be performed.

Such a provision is something very different from one which merely casts upon the grantee the performance of certain duties so long as they are necessary.

The former makes the grant determinable when there is no further occasion for the services, but, in the latter case, if the operation of any natural cause,—*e.g.*, the progress of cultivation, which has caused wild elephants to cease out of the land, where the past services were, to prevent the incursions of such animals,—removes the necessity for the services, the grantee will hold the lands practically freed from the condition originally imposed upon him.

Further, *Held*, that, upon the true construction of the sunnuds, the grantees though bound to protect the pergunna from the incursions of wild elephants so long as those incursions lasted; and though still bound to do so should, by any chance, those incursions be renewed; and though they might be liable to forfeit the tenure if they wilfully failed in the performance of this duty, they were not liable to have their lands resumed because there was no longer any occasion for the performance of this particular service, "there being now no fear of the depredations of elephants in those places;" and, lastly, that it emphatically lay upon the appellant, who was seeking to dispossess, or to rackrent, the respondents, who by themselves, or their ancestors, had brought the lands into

cultivation, and enjoyed them for a long period, to make out a clear title to resumption, and that he had failed to do so.—*Forbes* v. *Meer Mahomed Tuquee and others.* Vol. 13, p. 438.

In a suit brought by an auction purchaser to resume possession of certain villages held under the tenure known as *Ghatwally* tenure, and not an ordinary suit for resumption and re-assessment, the substantial question raised in the suit being, whether the appellant, as an auction purchaser, having acquired the rights of the Zemindar, with whom the original settlement was made, was entitled to resume and put an end to the *Ghatwally* tenure. *Held*, that, under the circumstances, the right did not accrue to the Zemindar, on the mere suggestion that the services had ceased, or, that they were no longer necessary, and that the principle which should govern the case, was that laid down in *Forbes* v. *Meer Mahomed Tuquee and others.* (Vol. 13, p. 438.)—*Kooldeep Narain Singh* v. *The Government and others.* Vol. 14, p. 247.

See AMARAM TENURE,
CHAKERAN LANDS,
ENAM,
EVIDENCE,
GHATWALLY TENURE,
SOVEREIGN POWER.

RE-UNION.

See JOINT UNDIVIDED HINDOO FAMILY.

REVENUE, ARREARS OF.

See LIMITATION,
SALE FOR ARREARS OF REVENUE.

REVENUE, BOARD OF.

See SALE FOR ARREARS OF REVENUE.

REVENUE, PAYMENT OF, TO SAVE ESTATE.

See LIEN.

REVERSIONER.

In a suit, the main object of which was to set aside certain alienations, in which the nearest reversioner at the time when they took place was charged with having concurred, the next presumable reversioner was held entitled to question them, and the pendency of the life of the nearest reversioner was not considered a fatal objection to the institution of a suit.—*Kooer Goolab Sing and others* v. *Rao Kurun Sing.* Vol. 14, p. 176.

See LIEN,
MAINTENANCE,
PRESUMPTIVE HEIR,
SISTER'S SON,
WIDOW.

REVIEW OF JUDGMENT.

It is not too late to impugn the regularity of a proceeding granting a review of judgment after the whole case has been decided, and brought before the Judicial Committee of the Privy Council, on appeal, for adjudication, on the ground that if the appellant had deemed himself aggrieved by the order for review he ought to have appealed at the time, and that he was too late in doing so after a decision had been pronounced against him.

After a decision has been passed, unquestioned by appeal, its finality should be left in doubt no longer than the requisites of justice imperatively demand.

A review is perfectly distinct from an appeal, and it is quite clear from the regulations on the subject that the primary intention of granting a review was a re-consideration of the same subject by the same Judge, as contra-distinguished to an appeal, which is a hearing before another tribunal.

It is not to be said that there may not be cases in which a review may take place before another and a different Judge; because death, or some other unexpected and unavoidable cause may prevent the Judge who made the decision, from reviewing it; but such exceptions are allowable only *ex necessitate.* In all practicable cases the same Judge ought to review; and for the attainment of that object, expedition in presenting a petition for the review is indispensable, and the only practicable course for attaining that end by accelerating the hearing of the review before accident or unexpected events shall have removed the original Judge.

The evident consequences of delay, unless justified by particular circumstances, are, that all the arrangements

between man and man, concluded without any reason to suppose they are impeachable, may be set aside, and thrown into confusion; producing, at one time, severe hardship to the proprietor, at another, evil consequences to those who dealt with him; and thus all arrangements and transactions, which are the very life and soul of property, may be disturbed to the detriment of all concerned.

Whenever a petition for review of any Judgment of the Sudder Court was presented after three months it was indispensable that the party presenting such petition should in the first instance account for the delay.

Where a period of five and a half years had passed away since the original decision, and a review had been granted, the Judicial Committee of the Privy Council were unable, from a perusal of the petition for review, to discover any satisfactory reason for the delay which had occurred, and considered the reasons assigned for granting the review wholly insufficient.

Circumstances may exist to justify such a delay, and the granting a review thereafter; but the causes accounting for the delay, and intended to justify the grant of such a review, ought to be of grave importance; otherwise litigation may be indefinitely suspended, and all the evils incidental to the uncertainty of the rights of property be incurred.—*Maharajah Moheshur Sing* v. *The Bengal Government.* Vol. 7, p. 283.

If there is a decision upon a review of Judgment, that decision is to be considered the final decree.—*Nogender Chunder Ghose and another* v. *Mahomed Ensuff and others.* Vol. 12, p 107.

See APPEAL,
JURISDICTION,
PRACTICE,
SPECIAL LEAVE TO APPEAL.

REVOCATION.

See ARBITRATION.

RIPARIAN PROPRIETORS.

See ALLUVIAL LANDS.

RIVER.

See ALLUVIAL LANDS.

RYOTS.

See UNDER TENANTS.

SALARY.

See EXECUTION.

SALE.

See CONFISCATION,
EXECUTION,
PRINCIPAL AND SURETY.

SALE AFTER ATTACHMENT.

A obtained an execution against his debtor, in the form of an attachment against the debtor's real property. The debtor, with the consent of A, made a private sale of the property, and, out of the proceeds, satisfied the debt, but no application was made to the Court for the confirmation of the sale, or for the removal of the attachment, and the attachment still remained, at all events formally, in force. Subsequently B, another creditor, obtained an attachment upon another judgment, and proceeded to a judicial sale, treating the former sale as void; and the question at issue, was, whether the purchaser under the second sale had a good title, and was entitled to say, that the prior sale was to all intents and purposes void as against him. *Held*, that, as to the words *any private alienation of the property attached, whether by sale, gift or otherwise, shall be null and void* contained in Section 240 of Act 8 of 1859, the object was, to make the sale null and void, so far as it might be necessary to secure the execution of the decree, and relate only to alienation which would affect the creditor who obtained the attachment; and that they were intended for the protection of the creditor who had obtained an execution, and not for the protection of all persons who at any future time might possibly obtain executions.—*Anund Loll Doss* v. *Jullodhur Shaw and another.* Vol. 14, p. 543.

SALE DEED.

See REGISTRATION.

SALE BY SHERIFF.

In an appeal from a decree of the Sudder Court of Madras, confirming a

sale made by the Sheriff of Madras under writs of *Fi-fa* issued out of the Supreme Court of Madras, of certain real estate, upon which an equitable charge had been created by the Will of the great-grandfather of one of the appellants, in her favor. *Held*, that, there being no sufficient proof of the appellants having been in any way divested of their interest in the property under the Will, the seizure and sale thereof by the Sheriff of Madras in certain suits against the executor of the Will and another, was illegal.—*Lazar and another* v. *Colla Ragava Chitty*. Vol. 2, p. 83.

SALE FOR ARREARS OF RENT.

A suit was brought by the appellant as mortgagee after foreclosure to recover possession of certain talooks, and to set aside a judicial sale of them made at the instance of the Zemindar, under a claim for arrears of rent; and the main question in the appeal was, whether the sale made to the respondent under a decree in a summary suit instituted by the Zemindar against the heirs of the mortgagor for arrears of rent, treating them as defaulting tenants, was a valid sale, as against the mortgagee, who was not a party to that suit; it being plain that when this summary suit was commenced the heirs of the mortgagor had no right or title whatever in the talooks, the appellant the mortgagee having become owner, and having, moreover, obtained a decree for possession. *Held*, that, under the circumstances, and with the knowledge the Zemindar had, he could not properly treat the heirs as holders of the tenure, so as to affect the rights of the appellant, of whose title, and efforts to obtain possession he had notice; and that the sale was invalid and should be set aside.

Bengal Regulation No. VIII of 1819, Section 11, Clause 1, gives an express power to sell the tenure free of all incumbrances that may have accrued upon it by the act of the defaulting proprietor, his representatives or assignees; but the power so given is confined to the case of tenures where the right of selling, or bringing to sale for an arrear of rent, has been specially reserved, by stipulation, in the engagements interchanged in the creation of the tenure.—*Forbes* v. *Baboo Luchmeeput Singh and others*. Vol. 14, p. 330.

SALE FOR ARREARS OF REVENUE.

Under the then existing regulations, *Held*, that, the Governor-General in Council could legally order a sale for the arrears of a monthly instalment of revenue before the close of the year; but, that in order to warrant that act, there must be an arrear of a previous year, or of a monthly instalment; and that, though it was most desirable that the Collectors should take in every instance a written engagement, signed by the parties to be charged, yet its existence was not made, either expressly or by implication, a condition precedent to the right to enforce the payment of the revenue by monthly instalments.

If the amount of annual revenue be fixed, and agreed for by the Zemindar, though not in writing, to be paid by *certain ascertained* monthly instalments, the powers given by the regulations attach. The *kist* or instalment in such case is *payable monthly* within the provisions of the Regulations of 1793.

If there be an arrear of the annual assessment, or of a *fixed monthly kist* or *instalment* of that assessment unpaid on the first day of the following month, the Governor-General in Council might order a sale, and the Board of Revenue might direct the *whole* estate of the defaulting Zemindar to be sold.

By Bengal Regulation No. V of 1812, the discretion as to *quantum* was vested in the Board of Revenue, and sales by public auction under their authority were rendered absolutely secure from all objections as to excess.

Government will not forego the right of selling a Zemindary if default be made in paying the instalments, by taking a bond with sureties, by which the estates of the sureties also are rendered liable for the due payment.—*Kirt Chunder Roy and others* v. *The Government and others*. Vol. 1, p. 383.

The Bengal Regulations up to and including No. XVIII of 1814, are to the effect, that, the discretionary power of deciding whether the whole of a defaulter's lands, or any, and what portion, of them should be actually sold to pay the arrears of revenue, which was originally vested in the Governor-General in Council, had been transferred to the Board of Revenue and Commissioners, subject to the control of the Governor-

General in Council, whenever he thought fit to interpose in his executive capacity; but, in order to assist the Board in this decision, and to prevent delay, it was the duty of the Collector, whenever any revenue fell into arrear, to report the amount to the Board of Revenue, or Board of Commissioners, and, either before or after advertising a sale, to send a statement of the particular land of the defaulter which he proposed should be sold to pay off the arrears; and the Collector was in no case to proceed to an actual sale without the express sanction of the Board.

The spirit and tone of the whole Code of Regulations required that where there were separate assessments upon definite portions, or divisions, of the property, the property should be put up for sale in separate lots, unless it were the wish of the proprietor, or for his obvious benefit, that the whole estate should be put up in one entire lot, in which case the whole should be sold, and the surplus paid over to him.

The sale of an entire talook, consisting of 210 villages and hamlets, but sub-divided for fiscal purposes into 74 territorial divisions, in one lot, held to be an act unauthorized either by the general rules and principles of the regulations, or by any specific authority previously conferred by the Board of Revenue for that purpose.

The sale being illegal, an unauthorized subsequent confirmation thereof by the Board of Revenue could not render such sale valid.

The original proprietor of the estate sold, by receiving the surplus purchase-money, held not to have so acquiesced in the sale made, as to give legal effect to a sale altogether void for want of authority, the proprietor having every reason to believe that the sale was made by the authority of the Board of Revenue.

The course to be taken with regard to the innocent purchaser upon such a sale being annulled. *Held*, to be, that, an account should be taken of the principal and interest due to him in respect of the purchase-money paid by him into the Treasury, and also of the net profits made by him out of the estate during his occupancy, making all just and reasonable allowances for permanent improvements made by him, and that upon payment to him of whatever, if anything, may appear due to him on the taking of such account, possession of the talook should be delivered to the original proprietor.—*Maharajah Mitterjeet Sing* v. *The Heirs of the late Ranee, widow of Rajah Juswunt Sing.* Vol. 3, p. 42.

Certain lands originally belonged to one Rajah *Mohun Lal Khan*, who in 1818, granted a perpetual lease of a portion thereof to the respondent's father, under whom he claimed. In 1837, the lands were sold for the purpose of satisfying the arrears of Government revenue due by the Zemindar, the Government became the purchasers, and the sale was fully confirmed according to the regulations. A lease of the lands for a term of twenty years was granted by Government to the appellant and his brother, to whose rights he had succeeded. Government subsequently becoming sensible that the sale was not a valid one, an arrangement took place, whereby the estate was restored to the Zemindar, the appellant, waiving his rights under the twenty years' lease to a portion of the estate, but retaining a certain part thereof, a portion of which consisted of the land leased as aforesaid to the respondent's father, and taking a new lease thereof from the original proprietors, the respondent being no party to the arrangement. A suit was brought by the respondent to displace the lease held by the appellant under the arrangement with the Government and the original proprietors. *Held*, that, *primâ facie*, according to Bengal Regulation No. XI of 1822, the appellant was entitled, because the effect of that regulation was, that upon the Government revenue falling into arrear, and a sale being made by Government for the purpose of satisfying that arrear, not only was the estate of the original proprietors, which had been sold, displaced, but all under-tenures founded on that estate, were liable to be avoided and annulled, and it appeared that the appellant had taken the proper means of avoiding the same. That the appellant had not placed himself in the position of an under-lessee of the original proprietors, and thereby subject to the perpetual lease derived under the perpetual lease antecedent to his lease. That there was nothing in the compromise which could affect the title of the appellant, and render it incumbent on him to submit to the lease which had been granted to the respond-

ent. That it was perfectly clear that if there was any abandonment upon the part of the appellant under the lease from Government, it was an abandonment on terms. That the respondent, if he adopted the abandonment, must also adopt the terms on which that abandonment was made, and that the Lower Court did not seem to have considered, that, all the right of the respondent was merely to institute a suit for the purpose of setting aside the sale, and the lease which had been granted under that sale.

The right to impeach a sale given by the regulations was not merely to the original proprietors, but to parties having estates derived from those proprietors antecedently to the sale being made.—*Watson* v. *Sreemunt Lal Khan.* Vol. 5, p. 447.

Decree of the Court of Sudder Dewanny Adawlut at Calcutta, upheld, whereby, in a suit instituted to set aside for irregularity a sale of an ancestral estate, sold under the provisions of Act 1 of 1845, for arrears of Government revenue, and to obtain possession, with mesne profits and interest, that Court directed that the sale, having been held in opposition to the provisions of Act 1 of 1845, be cancelled; that agreeably to Section 25 of that Act the purchase-money be refunded, with interest, to the auction purchaser by Government; and that both parties be restored to the position they severally occupied subsequent to the default and previous to the sale; the Court of the Judicial Committee of the Privy Council being of opinion that it was important that the regularity of Government sales under Act 1 of 1845, for arrears of Revenue, should be strictly observed.

The Lower Court in its judgment remarked that Act 9 of 1854, referred only to technical errors, defects or irregularities of procedure in Courts of Civil Judicature, and not to rules of law or conditions which affected the substantive rights of the parties.—*Maharajah Mahashur Singh Bahadoor* v. *Baboo Hurruck Narain Singh and others.* Vol. 9, p. 268.

The principal object of Bengal Regulation No. XX of 1795 was the security of the public revenue.

The *onus* of proving the want of due notification of the time and place of sale, *Held*, under the circumstances, to be upon the appellant, the party alleging the same.

The conduct of the Collector in endeavouring to distinguish between real and sham bidders upheld, he being bound in the opinion of the Court, under the circumstances, to satisfy himself reasonably, that the parties were what they professed to be, real bidders.

Held, that payment of deposit could not be required before the acceptance of the bidding, and the knocking down of the estate.—*Rajah Muhesh Narain Sing* v. *Kishanund Misr and another.* Vol. 9, p. 324.

Suit by respondents for possession of certain Mouzahs, alleged to form part of a Zemindary, and to have been held *khas* by the Zemindar at the time of a sale of the Zemindary under Bengal Regulation No. XI of 1822, to realize arrears of Government Revenue. Decision of the Court of First Instance, dismissing the respondent's suit, confirmed.—*Wise and another* v. *Bhoobun Moyee Debia Chowdrainee and another.* Vol. 10, p. 165.

As to the question, whether a plaintiff could, in point of law, insist, notwithstanding an auction sale for arrears of revenue, that, as against him, the sale ought to be viewed as a private sale. *Held*, that, under the circumstances, the sale—a fraudulent devise to bring about the same being alleged—must be considered as a private sale.

The exception that a fraudulent purchase at an auction sale by a mortgagee will not defeat the equity of redemption, is an exception grafted on the general rule that a Government sale for arrears of revenue gives a title against all the world.—*Nawab Sidhee Nuzur Ally Khan* v. *Rajah Ojoodhyaram Khan.* Vol. 10, p. 540.

See LIMITATION,
RESUMPTION.

SALE, SETTING ASIDE.

See SALE FOR ARREARS OF RENT,
SALE FOR ARREARS OF REVENUE,
SALE UNDER DECREE.

SALE UNDER DECREE.

A suit was brought in the nature of an

action of ejectment, to oust the appellants from the possession of certain landed property, and, with that object, to set aside a sale made by public auction to the appellants, and for mesne profits; the principal question raised, being, whether a sale by the Collector, under an order of the Civil Judge, in execution of a decree, ought to be set aside eleven years after the date of sale, to the prejudice of the appellants, the auction purchasers, for an alleged irregularity on the part of the Collector, in the mode of publishing the notice of the intended sale, in not having complied with the requirements of Bengal Regulation No. XLV of 1793, Section 12, the plaintiff having previously availed himself of the remedy by summary suit given by Bengal Regulation No. VII of 1825, Section 5, Clause 2, shortly after the sale, to endeavour to set aside the sale on the ground of irregularity, and not having in that suit complained of the irregularity as to the posting of the notice of sale urged in the present suit. *Held*, that, it had not been made out to the satisfaction of the Court that there was any town or village within the Pergunna at which notice could have been given. That the Notification having been posted at the principal respondent's house did not, under the circumstances, constitute a material irregularity with the provisions of the regulation referred to, or, that, if there had been an irregularity, it ought to have been brought before the Court below at the time of the summary suit and taken advantage of them.—*Lamb and another* v. *Bejoy Kishen Dass and others.* Vol. 8, p. 427.

In an appeal in a suit brought to recover possession of certain Putnee talooks, and to set aside the sale thereof, on the ground of irregularity, the Court of the Judicial Committee of the Privy Council, taking all the matters into consideration, and considering that the appeal was from the unanimous decision of the Court below on a question of fact, upheld the decision of that Court dismissing the suit.—*Mussumat Kripomoye Debia* v. *Gerishchunder Lahore and others.* Vol. 8, p. 467.

It is the practice of the Indian Courts, and it is one perfectly consistent with reason and justice, not to give possession under a Judicial sale, by removing the possession of one who is in possession under an apparently *bond fide* title. If the debtor can assert his title to possession by suit only, the new owner of his title can have no higher claim. The Courts therefore leave the purchaser to assert his title by regular suit.—*Tarakant Bannerjee* v. *Puddomoney Dossee and others.* Vol. 10, p. 476.

A purchaser at an execution sale under a decree in a mere Civil Suit for monies, takes merely the right, title and interest of the judgment debtor, and, therefore, subject to whatever subsisting interests in the lands have been effectually granted or created by any former Zemindar.—*Baboo Dhunput Singh* v. *Gooman Singh and others.* Vol. 11, p. 433.

The appellant and the respondent had both obtained separate decrees, in respect of arrears of rent due to them respectively by one *Gour Pershad*, deceased. They had both taken out execution of their decrees after his death, and the appellant had, at an execution sale, purchased the lands in dispute, against which the respondent in this suit sought to execute his decree, notwithstanding the sale to the appellant, on the ground that the appellant had acquired by his purchase, not the interest of the heir, but only the interest of the widow of the deceased, which really was nothing, and that, therefore, he, the respondent, was entitled to sell, in execution of his decree, the interest of the heir. *Held*, that, there had been no irregularity which would justify the setting aside the sale. That, the estate of *Gour Pershad* was sold under the decree, in execution for his debt; and that the interest of the widow, the registered proprietor, and ostensible owner, of the estate, and also the interest of the son, if he had any interest, was bound by the decree; and that, therefore, as between the appellant and the respondent, the appellant was entitled to, and could not be deprived of, the benefit which had resulted to him from his greater diligence in enforcing his demand.—*The General Manager of the Raj Durbhunga* v. *Maharajah Coomar Ramaput Sing.* Vol. 14, p. 605.

See LIMITATION,
MORTGAGE.

SAPINDAS.

Under the Hindoo Law current in

the North-West Provinces, great-great-great-grandsons rank amongst the class of *Sapindas*, and are entitled to inherit as *Gentiles.—Bhyah Ram Singh and another* v. *Bhyah Ugur Singh and another.* Vol. 13, p. 373.

See SISTER'S SON.

SEA.

See ALLUVIAL LANDS.

SEAWORTHINESS.

See TIME POLICY.

SEBAIT.

The *Sebait* of a talook dedicated to the religious services of an idol, has not the legal property, but only the title of manager of a religious endowment. In the exercise of that office she cannot alienate the property, though she may create proper derivative tenures, and estates conformable to usage.

To create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty in a *Sebait*, and is not, therefore, presumable.

Where variableness of jumma is the normal condition, the mere naming a sum certain in connection with the grant of a descendible tenure, does not impart of itself fixity to that sum in the absence of positive words, or of other evidence to show that such was the original design.—*Maharanee Shibessouree Debia* v. *Mothooranath Acharjo.* Vol. 13, p. 270.

SECOND ADOPTION.

See ADOPTION.

SECONDARY EVIDENCE.

See EVIDENCE.

SECRET PARTNER.

See PARTNERSHIP.

SECTS.

See MAHOMEDAN LAW.

SECURITY.

See EXECUTION,
LEASE,
PRACTICE.

SECURITY FOR COSTS.

Upon an appeal from the judgment of the Court of Sudder Dewanny Adawlut at Calcutta, which dismissed an appeal brought by the appellant in that Court, on the sole ground, that, under Bengal Regulation No. XIV of 1829, Section 2, Clause 1, the appellant, who was at the time of bringing the appeal temporarily residing in England, but had a permanent residence and Indigo factories at Dacca within the Company's Territories, was to be deemed an inhabitant of a foreign country, and had omitted to furnish security for costs within six weeks of the date of filing his appeal, although no demand, requiring him to do so, had been made by the Court, or by the respondents, and although he had, by his vakeel, offered to furnish security, if required by the Court. *Held*, that, the judgment could not stand, and that the suit must be remitted to India, to be tried on the merits. —*Wise* v. *Jugbundoo Bose and another.* Vol. 7, p. 431.

See APPEAL.

SEIZIN.

See GIFT INTER VIVOS.

SELF-ACQUIRED PROPERTY.

If the acquirer of separate property leaves male issue, it will descend as separate property to that issue down to the third generation. Although, therefore, where there is male issue, the family property, and the separate property will not descend to different persons, they will descend in a different way, and with different consequences; the sons taking their father's share in the ancestral property subject to all the rights of the coparceners in that property; and his self-acquired property, free from those rights. The course of succession will not be the same, for the family and the separate estate, and it is clear, therefore, that according to Hindoo Law there need not be unity of heirship.—*Katama Natchiar* v. *The Rajah of Shivagunga.* Vol. 9, p. 539.

The decision in the *Shivagunga* case

(Vol. 9, p. 539) will be found to proceed solely and expressly, on the finding of the Court, that the Zemindary in question was proved to be the self-acquired and separate property of *Gowery Vallaba Taver*. It assumes that, if this had not been so, the decision would have been the other way.—*Stree Rajah Yanumula Venkayamah* v. *Stree Rajah Yanumula Boochia Vankodora*. Vol. 13, p. 333.

See JOINT UNDIVIDED HINDOO FAMILY,
RAJ,
WIDOW,
WILL.

SEPARATE ESTATE OR PROPERTY.

See IMPARTIBILITY,
JOINT UNDIVIDED HINDOO FAMILY,
RAJ,
SELF-ACQUIRED PROPERTY,
SUCCESSION,
WIDOW,
WILL,
ZEMINDAR.

SEPARATE USE.

See LIFE INTEREST.

SEQUESTRATION.

In a suit in which, on the 2nd February 1847, a Writ of Sequestration was issued by the Supreme Court of Bombay, on the Equity side of that Court, in a cause in which one *Meersa Ally Mahomed Shoostry* and *Bebee Mariam Begum* were plaintiffs and *Aga Mahomed Rahim Sherasee* and others were defendants, for the payment of Rupees 100,000; and wherein on the 4th March following a second Writ of Sequestration also issued for the non-payment of a like sum of Rupees 100,000, and where, on the 27th of March the Sheriff, to whom the Writs were addressed, made his return to the Court, by which he certified that on the 18th March he had seized and sequestered Mazagon docks under and by virtue of the two Writs of Sequestration. *Held*, that, under this state of circumstances, according to the Rules of a Court of Equity, no proceedings could be taken against the sequestrator except by leave of the Court. That where property is in the custody of the Court, as when in the possession of a receiver, the course pursued in the Courts, if it appears that there is a legal title, has been to permit an action of ejectment to be brought to put the matter in the most convenient course of determination.

In this suit, the appellant, having set up a title to a moiety of the property seized by the Sheriff, presented a petition to the Court praying that the Sheriff might be ordered to withdraw the Writs of Sequestration and relinquish one moiety of the property to the appellant—thus, in truth, asking the same relief which he would have obtained had he brought his action of ejectment, and succeeded in that action—and also prayed that, if the Court thought fit, the respondents, the complainants in the suit, might be directed to exhibit interrogatories in the office of the Master of the Court, for the examination of the appellant, and for the discovery of his interest in the premises, or that such other order should be made as might be fit. Instead of bringing this petition to a hearing, in which case, inasmuch as his title appeared on his own showing to be a mere legal title, he would merely have obtained liberty to bring an action of ejectment, the parties came to an arrangement to the effect, that, the matter of the petition should be set down on the Board of Causes, for hearing on the first day of the next ensuing November term, and that the witnesses on both sides should be examined *vivâ voce* before the Court at the hearing. *Held*, that, this was intended to be substituted for a trial at law on the Plea side of the Court; the trying an action of ejectment in substance, upon this petition, which prayed precisely the same relief that would have been had in an action of ejectment, and substituting these proceedings for such a trial.—*Musadee Mahomed Casum Sherasee* v. *Meersa Ally Mahomed Shoostry and another*. Vol. 6, p. 27.

SERVICE OF PROCESS, &c.

See PRACTICE.

SERVICE, SUBSTITUTION OF.

See PRACTICE.

SERVICE TENURE.

See CHAKERAN LANDS,
GHATWALLY TENURE,
RESUMPTION OF LANDS.

SET OFF.

A firm borrowed from a Bank certain sums of money, upon their promissory notes, and deposited as security with the Bank sundry negotiable securities, with power to sell the same in case of default in re-payment, the Bank to hand over to the borrowers the surplus proceeds if any, and before the loans fell due became insolvent. *Held*, that, the Bank could not set off against the claim of the Official Assignee of the insolvent's estate, to the balance of the proceeds of the securities, after re-payment of the loans advanced thereon, further sums due to the Bank by the insolvents in respect of other promissory notes, discounted for them by the Bank, prior to the advancement of the loans upon the negotiable securities, the same not falling within the meaning of the term *mutual credit* in the Indian Insolvent Act, 9, Geo. 4, Cap. 73.—*Young* v. *Bank of Bengal*. Vol. 1, p. 87.

See INSOLVENCY.

SETTLED ACCOUNTS.

See ACCOUNT STATED.

SETTLERS.

See SUICIDE.

SEVERANCE IN APPEAL.

See COSTS.

SHAREHOLDER.

See ANCESTRAL PROPERTY,
ENHANCEMENT OF RENT.

SHEKUST PYWUST.

See ALLUVIAL LANDS.

SHERIFF.

See ESCAPE,
EXECUTION.
FALSE IMPRISONMENT,
PRACTICE,
SALE BY SHERIFF.

SHIAH.

See DOWER,
MAHOMEDAN LAW,
WILL.

SHIFTING BURTHEN OF PROOF.

See ENHANCEMENT OF RENT,
ESCHEAT,
EVIDENCE,
WIDOW.

SHIPS AND SHIPPING.

See BRITISH SHIP,
TIME POLICY.

SHRADH.

See CUSTOM,
WIDOW.

SISTERS.

The general rule in Bombay has long been, and is, to treat the sisters as heirs to the brother, rather than the paternal relatives of the description of the plaintiff's, *viz.*, sons of their father's brother. —*Venayeck Anundrow and others* v. *Luxumeebaee and others*. Vol. 9, p. 516.

SISTER'S SON.

A sister's son does not come in as one of the earlier class of heirs, known as *sapindas*; and, according to the doctrines and rules of the Benares School of Law prevailing in the Mithila country, he is not, as expectant heir, entitled to sue to set aside an alleged invalid adoption made by the childless widow of his uncle.—*Thakoorain Sahiba and another* v. *Mohun Lall and others*. Vol. 11, p. 386.

Held by the Court of the Sudder Dewanny Adawlut of the North-Western Provinces, and recognized and confirmed by the Court of the Judicial Committee of the Privy Council, in *Thakoorain Sahiba and another* v. *Mohun Lall and others*, (Vol. 11, p. 386), that, the plaintiff, a sister's son, had no *locus standi* to question the validity of an alleged illegal adoption by the widow of his uncle.—*Mussumat Moonea and another* v. *Dhurma*. Vol. 11, p. 393.

See ADOPTION.

SLEEPING PARTNER.

See PARTNERSHIP.

SOLE ABSOLUTE AND EXCLUSIVE USE.

See LIFE INTEREST.

SOLICITOR.

See ATTORNEY.

SON.

See ADOPTION,
PRIMOGENITURE.

SOODRA.

See MAINTENANCE,
MARRIAGE.

SOONDERBUNS.

The *Soonderbuns*, whatever were then their precise limits, were neither included, nor intended to be included in the Decennial Settlement of 1792, but remained the property of Government, as the general owners of the soil.

The then Commissioners of the *Soonderbuns* having in 1829, under the 13th Section of Bengal Regulation No III of 1828, proceeded to fix and lay down the boundaries of the *Soonderbuns* in the immediate neighbourhood of the appellant's property, and there having been no application within the proper time for a rectification of the boundary line, the High Court of Calcutta held that the appellant, by force of said Regulation No. III of 1828, was bound by the Commissioner's demarcation of the *Soonderbuns*, and dismissed his suit, which, amongst other things, re-opened the boundary question, and the Court of the Judicial Committee of the Privy Council, on appeal, agreed with the High Court in the conclusion that the regulation was a bar to the appellant's suit.—*Rajah Burdocant Roy* v. *The Commissioner of the Soonderbuns.* Vol. 12, p. 225.

Judgment of the Court below upon a question whether certain lands fell within the limits of the *Soonderbuns* reversed upon appeal.—*Rajah Burdocant Roy* v. *The Commissioner of the Soonderbuns.* Vol. 12, p. 242.

SOONEES.

See MAHOMEDAN LAW.

SOVEREIGN POWER.

The plaintiff by her bill, filed on the Equity side of the Supreme Court of Madras, prayed, amongst other things, that she might be declared, as the senior or first married widow of *Sevajee*, the late Rajah of Tanjore, who died without male issue, entitled to the private and particular estate and effects of her deceased husband, subject to the payment of his debts, &c. She further prayed that the defendants, the East India Company, might be declared to be trustees of such of the property as might have been taken possession of by them, or their servants, and also for an account, and a Receiver. The defendants, the East India Company, in their answer set up two lines of defence; *First*, that the plaintiff had no case on the merits; and, *Secondly*, that the Court had no jurisdiction to try the suit; submitting as to the first, that, the Rajah *Sevajee* was an independent and absolute Sovereign, and, as such, was not possessed of any private estate, as distinguished from the public or State property, and further, that, according to Hindoo Law, all the widows, and not the senior widow alone, were entitled to succeed to the estate of a Mahratta dying without male issue, either natural or adopted. In support of their second line of defence, *viz.*, that the Court had no jurisdiction, the defendants submitted, that they took and detained the property of the late Rajah in their public or political capacity, that their taking the property was an act of State; and that the question of what portion was private, and what public property involved the construction of a treaty, and that, consequently, neither the Supreme Court at Madras, nor any other Municipal Court in Her Majesty's dominions had any jurisdiction to entertain the question. It was further urged that the Court had no jurisdiction because the suit had reference to a matter concerning the revenue under the management of the Governor and Council. The Supreme Court at Madras declared the plaintiff entitled to the decree of the Court as prayed. *Held*, that, the transactions of independent States between each other are governed by other laws than those which Municipal Courts administer: and such Courts have neither the means of

deciding what is right, nor the power of enforcing any decision which they may make.

That the Statute 3 and 4, Will. 4, Cap. 85, in no degree diminished the authority of the East India Company to exercise on behalf of the Crown of Great Britain, and subject to the control thereby provided, the delegated powers of sovereignty.

That the law, as it stood in the year 1839, was accurately stated by *Chief Justice Tindal* in the case of *Gibson* v. *The East India Company*, (5, Bingham's New Cases, p. 273,) in which, after referring to various legislative enactments, he observed, "It is manifest that the East "India Company have been invested "with powers and privileges of a two-"fold nature, perfectly distinct from "each other, namely, powers to carry on "trade as merchants, and (subject only "to the prerogative of the Crown to be "exercised by the Board of Commis-"sioners for the affairs of India,) power "to acquire and retain and govern terri-"tory, to raise and maintain armed "forces by sea and land, and to make "peace or war with the native powers "of India."

That with respect to the property of the Rajah, whether public or private, it was clear that the Government intended to seize the whole.

That the Government had clearly ratified and adopted the acts of its agent, which was equivalent to a previous authority.

That the property now claimed by the plaintiff had been seized by the British Government acting as a Sovereign power, through its delegate the East India Company; and that the act so done, with its consequences, was an act of State, over which the Supreme Court at Madras had no jurisdiction.

That even if a wrong had been done, it was a wrong for which no Municipal Court could afford a remedy; and that the Court must advise Her Majesty to reverse the decree complained of, and dismiss the plaintiff's bill.

The general rule of Hindoo inheritance is partibility, the succession of one heir, as in the case of a *Raj*, is the exception.

There may be a distinction between the public and private property of a Hindoo Sovereign, and on his death, without having disposed of the same, some portions of his property, termed his private property, will go to one set of heirs, and the *Raj* with that portion of the property which is called public, will go to the succeeding Rajah.—*The Secretary of State in Council of India* v. *Kamachee Boye Sahaba*. Vol. 7, p. 476.

The treaty under which the East India Company assumed the Government of the Carnatic in 1801, vested the rights of sovereignty in the East India Company, and the East India Company in the exercise of what they considered their right of sovereignty resumed a certain *Jaghire*, and re-granted it to the son of the original holder,—not in the form of the original grant to his father, but in terms totally different, being for life only, and reserving to themselves the *Sayer* and other revenue duties. This was, in effect, an act of sovereignty exercised on the part of the East India Company, which the Supreme Court of Madras had no power to question.—*The East India Company* v. *Syed Ally and others*. Vol. 7, p. 555.

See SUICIDE.

SPECIAL APPEAL.

See APPEAL.

SPECIAL DAMAGE.

See TORT.

SPECIAL LAW.

See CONVERTS,
CUSTOM.

SPECIAL LEAVE TO APPEAL.

Special leave to appeal granted, the amount being very trivial, and greatly under the sum required by the Bombay Charter of Justice, and the Rules of the Privy Council; but the petitioners alleging, that, a question of great importance, to wit, a question as to the jurisdiction of the Supreme Court in matters relating to revenue, was involved; on the terms of the East India Company, (the real defendants,) undertaking to bring the appeal to a hearing, and to pay all costs, charges, and expenses which might be incurred on behalf of the respondents as well as on behalf of the appellants.—*Spooner and another* v. *Juddow*. Vol. 4, p. 353.

Leave given, on terms, to appeal, although the time for appealing had expired; petitioner having, under advice, filed a bill, instead of appealing against the order complained of.—*In re Musadee Mahomed Cazum Sherazee.* Vol. 5, p. 196.

Leave to appeal having been refused by the Court of Sudder Dewanny Adawlut of Calcutta, on the ground that the value of the lands in suit did not amount to Rupees 10,000; petitioner, upon allegations alleging that the actual value of the lands was more than the sum prescribed by the Order in Council, and that the Sudder Court had erroneously valued the suit, and had also improperly omitted to add the mesne profits, &c. Leave to appeal granted, upon terms, subject to the reservation, that if the facts mentioned in the petition were not correct the petition would be dismissed.—*Mussumat Ameena Khatoor and others* v. *Radhabenod Misser.* Vol. 7, p. 261.

Upon an application for special leave to appeal, the petition stating, amongst other things, that although the amount laid in the plaint as the value of the suit was Rupees 3,572 only, yet the real or market value of the land in suit exceeded the sum of Rupees 10,000, the amount mentioned in the plaint being assessed for fiscal purposes merely, *viz.*, three times the amount of one year's jumma, or rent, and that as the alleged value was under Rupees 10,000, the petitioner was prevented by the rules of practice of the Sudder Court from obtaining leave from that Court to appeal, leave granted to appeal, but, such leave not to be absolute, but subject to the production of proper evidence in India of the actual value of the property sued for, and the leave not to be of any effect unless a satisfactory affidavit of the value of the property were furnished by the petitioner and transmitted with the transcript.—*Mohun Lall Sookul* v. *Bebee Doss and others.* Vol 7, p. 428.

Five suits having been instituted between the same parties in India, each suit being in respect of the same talook, and involving the same question of law, and the Court of Sudder Dewanny Adawlut at Calcutta, having no power to grant leave to appeal, although the aggregate amount of the claim in the five suits exceeded the prescribed limits, and it being urged, that, important questions of Hindoo Law arose in the suits, justifying the indulgence prayed, leave to appeal granted, upon terms.—*Baboo Gopal Lall Thakoor* v. *Teluk Chunder Rai.* Vol. 7, p. 548.

Leave to appeal granted in a suit in which it was urged on the part of the applicant, that, the Zillah Judge had committed an error in calculating the amount of the claim, and in making the deductions he had, whereby the amount had been reduced below the appealable value, and that the appellant sought to re-open the question of value, which he alleged, by the plaint, to amount to Rupees 11,692-4-13.—*Prannath Roy Chowdry* v. *Ranee Surnomoyee.* Vol. 7, p. 553.

Two decrees of the Supreme Court of Madras were appealed from, the first dated the 22nd May 1820, and the other, on further directions, the 28th July 1821. It was not until the latter decree was pronounced that the appellants, the East India Company, preferred their petition of appeal to His Majesty in Council, which was allowed by the Supreme Court of Madras. Upon the objection taken by the respondents that it was not in the power of the Supreme Court to admit the East India Company to appeal from the original decree of the 22nd May 1820, and that in granting them liberty so to appeal it had exceeded its jurisdiction, it being admitted that it was not until after the decree on further directions was pronounced, and after an expiry of more than six months, that the appellants had applied for leave to appeal, and it being urged that the Supreme Court had no power to relax the restriction as to the time for appealing contained in the Charter. *Held*, that, the Supreme Court had no right to grant leave to appeal against the decree of the 22nd May 1820, and That, the appeal must be restricted to the last decree. However, upon a subsequent application on behalf of the appellants, praying special leave to appeal, for the reasons set forth, and supported by affidavit, one ground being, that a certain error in practice had existed in the proceedings of the Supreme Court from the granting of its Charter in 1800, up to the period of the application, whereby the appellants had been misled, the indulgence asked for was granted upon terms.—*The East India Company* v. *Syed Ally and others.* Vol. 7, p. 555.

A question of great public importance being alleged to arise in the suit, special

leave to appeal granted, upon terms, the value of the subject-matter in dispute being under Rupees 10,000.—*Sumbhoolall Girdhurlall* v. *The Collector of Surat and another.* Vol. 8, p. 1.

An important principle of law being involved in the decision, special leave to appeal granted, the amount of damages recovered being under the appealable value.—*Rogers* v. *Rajendro Dutt and others.* Vol. 8, p. 103.

A petition for special leave to appeal being *ex parte*, it is a universal and most important rule of the Court of the Judicial Committee of the Privy Council, that every fact which is material to the determination of the question raised upon the petition should be truly and fairly stated; and where there is an omission of material facts, whether it arises from improper intention on the part of the petitioner, or whether it arises from accident or negligence, still the effect is just the same, if the Court has been induced to make an order, which, if the facts had been fully before it, it would not, or might not, have been induced to make.

The Court being of opinion, that, there had been no intentional misrepresentation, and that there had been delay on the other side, discharged an order giving special leave to appeal where an important fact had been kept from the Court, without costs, remarking that, they would have thought it right, whether the mistake was intentional or unintentional, to have given costs had it not been for the delay.—*Mohun Lall Sookul and another* v. *Bebee Doss and others.* Vol. 8, p. 193.

Special leave to appeal granted on terms, in a suit in which the sum in dispute was valued at Rupees 200 only, but which was said to involve an important question respecting the right to resume lands held under a tenure called *Chakeran*, as to which some thirty suits had been brought.—*Joykissen Mookerjea* v. *The Collector of East Burdwan and others.* Vol. 8, p. 265.

Special leave to appeal granted from a judgment of the Judicial Commissioner of Oude, there appearing to be no positive law, regulation, or order, applicable to the admission of appeals to Her Majesty in Council from the Court of such Judicial Commissioner.—*Salik Ram and another* v. *Azim Ali Beg.* Vol. 8, p. 270; *Nawab Tajdur Bohoo* v. *Mirza Jehan.* Vol. 8, p. 274.

Special leave to appeal granted where the sum in dispute was under the appealable value, there being involved, amongst others, a question of general importance in India, as to the construction and working of the Insolvent Act 11 and 12, Vic. Cap. 21.—*Kerakoose* v. *Brooks.* Vol. 8, p. 339.

Appeal restored after an order, rescinding a previous order granting special leave to appeal, on the ground that there were omissions, in the petition for leave to appeal, of proceedings in the Court below which would have shown the true value of the subject-matter in dispute; satisfactory evidence that the real or market value of the lands exceeded Rupees 10,000, having been laid before the Registrar of the Sudder Court, to whom the matter had been referred.—*Mohun Lall Sookul and others* v. *Bebee Doss and others.* Vol. 8, p. 492.

Without applying to the High Court of Madras for leave to appeal, inasmuch as the petitioner had been advised that the judgment being only for Rupees 2,500, (though the real value of the annuity was much beyond that sum, and exceeded the appealable value,) applications for leave to appeal under similar circumstances had been refused both by the Sudder and High Court, on the ground that those Courts were bound by the actual amount of the judgment. The petitioner applied direct to Her Majesty in Council for special leave to appeal. The Court of the Judicial Committee of the Privy Council decided, that, under the very peculiar circumstances of the case, distinguishing it from those which had previously been determined, and, considering, that substantial questions of law were involved in the case, leave to appeal ought to be given.—*Mutusawmy Jagavera Yettapa Naiker* v. *Vencataswara Yettia.* Vol. 10, p. 313.

The statements of law and fact contained in the petition being considered of too general a character to enable the Court to judge of the propriety of granting special leave to appeal, the Court intimated that the petition must either be dismissed, with liberty to present another petition, or stand over to allow the petition to be amended; and that, in either case, the facts stated in

the petition must be verified by affidavit.

The petition having been properly amended, special leave to appeal was granted.—*Goree Monee Dossee and others* v. *Juggut Indro Narain Chowdery and others.* Vol. 11, p. 1.

Special leave to appeal having been granted, in a case in which the appellant named only two respondents, a third party, alleging an interest, was, upon her application to dismiss or suspend the hearing of the appeal, made a party respondent to the appeal.—*Nawab Umjad Ally Khan* v. *Mussumat Mohumdee Begum and others.* Vol. 11, p. 517.

The six months allowed by the Order in Council of the 16th April 1838, for appealing from a decree, expired pending proceedings for a review of judgment, and, but for a change of practice in the High Court of Calcutta introduced whilst such proceedings were going on, petitioners would have had a right to appeal. Special leave to appeal granted.—*Nogender Chunder Ghose and another* v. *Mahomed Ensuff and others.* Vol. 12, p. 107.

Special leave to appeal, under the circumstances, construed to mean, leave to appeal, as well against two decrees of the Zillah Court, as against two decrees of the Sudder Dewanny Adawlut at Calcutta.—*Ram Chunder Dutt* v. *Chunder Coomar Mundul and others.* Vol. 13, p. 181.

Special leave to appeal from an Order of the High Court of Calcutta dismissing the petitioner from his office of Moonsiff, refused, same not being a Patent Office within the meaning of the Statute 22, Geo. 3, Cap. 75; and the Court having no jurisdiction to entertain the application.—*In re Sree Mohun Ghutuck.* Vol. 13, p. 343.

Leave refused to appeal, in a suit in which no application for leave had been previously made to the High Court of Bombay—the Court making the decree —and in which the amount involved was below the appealable value; as, even if there were no other difficulties, the decision was not one which would govern other cases.

If there are any grounds to be assigned as an explanation of the circumstance that no leave to appeal to Her Majesty in Council has previously been applied for to the High Court, those grounds should be stated in the petition. —*Gungowa Kome Malupa* v. *Erawa Kome Jogapa.* Vol. 13, p. 433.

Special leave to appeal granted, against Orders of the High Court of the North-Western Provinces removing a minor from the custody of the petitioner, her mother, such leave to be without prejudice to any application to the Court below by the petitioner that she might be advised to make, to have access at suitable times to her daughter. —*In re Victoria Skinner* alias *Nowshaba Begum.* Vol. 13, p. 532.

Leave to appeal to Her Majesty in Council, granted by the High Court of Calcutta, although the suit was under the appealable value, in consequence of the importance of the question raised, and as the case was a representative one, and would govern twenty-eight other analogous cases.—*Hurryhur Mookhopadhya* v. *Madub Chunder Baboo and another*; *and Nobokishto Mookerjee* v. *Koylaschunder Buttacharjee and others.* Vol. 14, p. 152.

See APPEAL,
ATTORNEY,
CROSS APPEAL,
MASTER IN EQUITY,
MOONSIFF,
PRACTICE.

SPECIFIC PERFORMANCE.

Decree of the High Court of Madras, declaring that the respondent was entitled to specific performance of a certain lease, and to the possession and enjoyment of a certain Zemindary upon the terms of such lease, confirmed upon appeal. The Court of the Judicial Committee of the Privy Council, however, considering, that it might be questionable, whether the transaction did not operate merely as a security for money advanced and agreed to be advanced, and whether the Zemindar was not entitled to redeem, it was declared, that, the decree was, without prejudice to the claim for redemption, if any, to which the Zemindar might be entitled, and to any question which might be raised as to the amount actually advanced to the appellant, the Zemindar, as consideration by the respondent. —*Kamala Naicken* v. *Pitchacootty Chetty.* Vol. 10, p. 386.

See TIME.

SPIRITUAL PURPOSES.

See WIDOW.

SPLITTING CAUSE OF ACTION.

See CAUSE OF ACTION.

STAMPS.

The Court of the Judicial Committee of the Privy Council considering, that, under the circumstances, the Court below should have allowed the defendant to get his documents stamped, and, if necessary, should have adjourned the hearing for that purpose, remanded the suit, to enable the defendant to get the instruments stamped.—*Maharajah Rajundur Kishwur Sing Bahadoor* v. *Sheopursun Misser.* Vol. 10, p. 438.

The respondent in settlement of family differences, executed in favor of the appellant, his elder brother, a deed of release as to certain family property—which release was subsequently held to be a valid family contract between the two brothers—written upon unstamped paper, and containing an agreement for subsequent stamping, and which was afterwards stamped with an insufficient stamp of two annas. In a subsequent suit by the respondent against the appellant in which it was desired to use the document in evidence, the respondent in the Court of First Instance disputed the deed of release on the ground of genuineness only, but, in the Appellate Court, he also objected to its admissibility in evidence as being insufficiently stamped, and his objection was overruled. On appeal to the High Court of Bombay, that Court ruled, that, the deed of release was valid only to the extent of the value covered by the two anna stamp, and that to this extent it operated to reduce the respondent's claim. *Held,* that, admitting the stamp was insufficient, there were two courses which ought to have been taken by the High Court. The Court might have refused to admit the document for want of a proper stamp. That it was not said that that would have been a correct course, but that it would have been a possible course; or, they might, under the Acts and Regulations for that purpose have required the document to be properly stamped, and the penalty paid. That, as to rejecting the document *in toto,* there was the serious difficulty, that there did not appear to have been any objection raised to its admission in the Court of First Instance, and that it was difficult to see, how, that being the case, it would have been a just course to have rejected *in toto* the document in the Court of last appeal. That the Court of last appeal in India, did not take either of these courses. It did not reject the document, nor did it do, what obviously would have been the correct course, require the deed to be properly stamped, and the penalty paid, but left the deed as part of the evidence in the suit, just in the way in which it had been placed among the evidence by the Court of First Instance, and it qualified its effect, and the extent of its operation, by making it a deed of release, releasing so much of that which the plaintiff might otherwise claim, as would be covered by the insufficient stamp of two annas, a course apparently entirely without precedent, without principle, and without authority.—*Mantappa Nadgowda* v. *Baswuntrao Nadgowda.* Vol. 14, p. 24.

STATE, ACT OF.

See SOVEREIGN POWER.

STATUS.

See CHILDREN,
GUARDIAN AND WARD,
JOINT UNDIVIDED HINDOO FAMILY,
JUDGMENT IN REM,
LEGITIMACY.

STATUTE.

See JURISDICTION,
WAGER CONTRACT.

STAYING PROCEEDINGS.

See PRACTICE.

STOPPAGE IN TRANSITU.

Messrs. Boggs, Taylor & Co., bought of *Messrs. Thompson & Co.,* in the city of London, one hundred tons of British pig lead, "free on board" at £20 per ton, to be paid for by acceptances at six months, upon delivery on board, or in cash at two and a half per cent. discount, at the option of the sellers. The lead

was delivered on board, and receipts taken by the Lighterman from the Mate of the vessel, which vessel was chosen and indicated by *Boggs, Taylor & Co.*, the purchasers. The sellers elected to be paid by acceptances at six months, which they immediately received from the purchasers, and the latter failed soon after, after they had accepted the Bills, and after the Master of the vessel had signed Bills of Lading though the Mate's receipts were never given up by *Thompson & Co.*, to *Boggs, Taylor & Co.* The question arose at Bombay, in an action of Trover, whether these goods were *in transitu*, so as to give *Thompson & Co.* a right of stoppage, or had reached their journey's end, and were completely vested in the purchasers, *Boggs, Taylor & Co.*, and their assignees under the Bill of Lading. *Held*, That, the non-delivery of the Mate's receipts could not operate in any way whatever, as *Thompson & Co.* ought to have delivered them up, as it was their bounden duty to do; and that it would be preposterous that they should avail themselves of their own wrong against the other party, whom they had injured. That the acceptance taken on delivery of the goods was a payment in substance. That the question, whether or not anything remained to be done between the buyer and seller should always be kept in view in cases of this description, and that, as nothing whatever remained to be done between the buyer and seller, unless it were that the latter ought most certainly to have delivered up the Mate's receipts, which he wrongfully, or by oversight, kept possession of, without a shadow of right to them, of which fact, whether it were wrong, or error, he was not the party to take advantage of, the goods had reached their journey's end, and were no longer *in transitu* to be stopped.—*Cowasjee* v. *Thompson and another*. Vol. 3, p. 422.

STRIDHUN.

See WIDOW.

SUBMISSION TO ARBITRATION.

See ARBITRATION.

SUBSTITUTION OF PARTIES.

See PRACTICE.

SUBSTITUTION OF SERVICE.

See PRACTICE.

SUCCESSION.

There are two principles on which the rule of succession, according to the Hindoo Law, appears to depend, the first is, that which determines the right to offer the funeral oblation, and the degree in which the person making the offer is supposed to minister to the spiritual benefit of the deceased; the other, is an assumed right of survivorship.—*Katama Natchiar* v. *The Rajah of Shivagunga*. Vol. 9, p. 539.

The ruling of the Court of the Judicial Committee of the Privy Council in the case of *Katama Natchiar* v. *The Rajah of Shivagunga*, (Vol. 9, p. 539,) was, that the Zemindary should follow the course of succession as to separate property, although the family was undivided.—*Rajah Suraneni Venkata Gopala Narasimha Row Bahadoor* v. *Rajah Suraneni Laksma Venkama Row*. Vol. 13, p. 113.

See CHILDREN,
CUSTOM,
HINDOO LAW,
ILLEGITIMACY,
IMPARTIBILITY,
JOINT UNDIVIDED HINDOO FAMILY,
MAHOMEDAN LAW,
NATIVE CHRISTIANS,
RAJ,
SAPINDAS,
SELF-ACQUIRED PROPERTY,
SISTER,
SISTER'S SON,
SOVEREIGN POWER,
WIDOW,
ZEMINDAR.

SUICIDE.

The question at issue being, whether the interest of a Hindoo, a British subject, in a fund standing to the credit of an account in a cause in the Supreme Court at Calcutta, had been forfeited to the Crown by reason of his having committed suicide in Calcutta, and found *felo de se* by a Coroner's Jury there. *Held*, that, where Englishmen establish themselves in an uninhabited

or barbarous country, they carry with them not only the laws, but the sovereignty of their own State, and those who live amongst them and become members of their community become also partakers of, and subject to, the same laws. But that this was not the nature of the first settlement made in India. That was a settlement made by a few foreigners for the purpose of trade in a very populous and highly civilized country, under the Government of a powerful Mahomedan ruler, with whose sovereignty the English Crown never attempted or pretended to interfere for some centuries afterwards.

That if the settlement had been made in a Christian country in Europe, the settlers would have become subject to the law of the country in which they had settled.

That, though in India they retained their own laws for their own Government within the Factories which they were permitted by the ruling powers of India to establish, this was, not on the ground of general international law, or because the Crown of England, or the laws of England had any proper authority in India, but, upon the principles explained by *Lord Stowell* in a very celebrated and beautiful passage of his judgment in the case of "The Indian Chief."—(3, *Rob. Adm. Rep.*, 28.)

That the laws and usages of eastern countries where Christianity does not prevail are so at variance with all the principles, feelings and habits of European Christians that they have usually been allowed by the indulgence or weakness of the Potentates of those countries to retain the use of their own laws, and their Factories have for many purposes been treated as part of the territory of the Sovereign from whose dominion they come. But the permission to use their own laws by European settlers does not extend those laws to natives within the same limits, who remain, to all intents and purposes, subjects of their own Sovereign, and to whom European laws and usages are as little suited as the laws of the Mahomedans and Hindoos are suited to Europeans.

That, if the English Laws were not applicable to Hindoos on the first settlement of the country, the subsequent acquisition of the rights of sovereignty by the English Crown might enable the Crown by express enactment to alter the laws of the country, but until so altered the laws remained unchanged.

That the sole question in this case, was, whether by express enactment, the English Law of *Felo de se*, including the forfeiture attached to it, had been extended in the year 1844, to Hindoos destroying themselves in Calcutta.

That the law under consideration was inapplicable to Hindoos, and if it had been introduced by the Charters with respect to Europeans, the Court considered, that Hindoos would have been excepted from its operation. But that it was not so introduced appeared to be shown by the admirable judgment of Sir *Barnes Peacock* in this case, and if it were not so introduced, then, as to natives, it never had any existence.

That it would not necessarily follow, that, therefore, it never had existed as regards Europeans; that question would depend upon, whether, when the original settlers, under the protection of their own Sovereign, were governed by their own laws, those laws included the one now under consideration; whether an offence of this description was an offence against the King's peace, for which he was entitled to claim forfeiture; whether the Factory could for this purpose be considered as within his jurisdiction; as in that case it might be, that the subsequent appointment of Coroners by the Act of 33, Geo. 3, Cap. 52, Sec. 157, would render effectual a right previously existing, but for the recovery of which no adequate remedy had been previously provided. The Court, however, was not sure whether the Court below intended to determine this point or not, the Chief Justice, in his judgment, saying, "At "present we have merely to consider the question, so far as it relates to the goods and chattels of a native, who wilfully and intentionally destroys himself, and who cannot in strictness be called a *felo de se*; and we now proceed to deal with that question, and with that question alone." That the point so decided being perfectly clear, it was not necessary to go further; and that since the new Code, which confined the penalty of forfeiture within much narrower limits than existed previously to its enactment, and did not extend it to the property of persons committing suicide, the case could hardly again arise.—*The Advocate-General of Bengal v. Ranee Surnomoyee Dossee.* Vol. 9, p. 387.

SUIT, RIGHT OF.

See PROPERTY.

SUM CERTAIN.

See INTEREST.

SUMMARY SUIT.

See WIDOW.

SUNNUD.

Whether or not the existence of a *Sunnud* may be presumed from immemorial exercise of a privilege, when a party rests his case upon *Sunnuds* actually produced, by them he must stand or fall.

Ancient *Sunnuds*, brought forward under circumstances of suspicion, ought not to be received in evidence without enquiry into the custody from which they come, or other proof to show that they are genuine.—*Sri Sunkur Bharti Swami* v. *Sidha Lingayah Charanti.* Vol. 3, p. 198.

The omission of words of inheritance in a *Sunnud* does not show conclusively that the *Sunnud* is not hereditary.

Before the British power became the ruling power in India, it was extremely common where a tenure was in fact hereditary from father to son, to take out a new *Sunnud* upon each descent.—*Kooldeep Narain Singh* v. *The Government and others.* Vol. 14, p. 247.

See RESUMPTION OF LANDS.

SUPREME COURTS.

See CHARITIES,
CHARTER,
JURISDICTION,
MASTER IN EQUITY,
MINOR,
NATIVE CHRISTIANS,
PRACTICE,
RESTITUTION OF CONJUGAL RIGHTS,
SOVEREIGN POWER,
SPECIAL LEAVE TO APPEAL.

SURAT, NAWAB OF.

See JURISDICTION.

SURETY.

Held, that where a person had been accepted with five other persons as a surety, he bound himself unconditionally, without the other five; that the Court accepted him according to his obligation. That they accepted him as a separate security, and that that acceptance was valid and effectual and finished and executed as to him, without the least regard to the other five.—*Gopal Inder Narain Roy* v. *Jagarnath Gurg.* Vol. 2, p. 311.

See LEASE,
NOVATION,
PRINCIPAL AND SURETY.

SURVIVORSHIP.

See BROTHER,
ILLEGITIMACY,
JOINT UNDIVIDED HINDOO FAMILY,
SUCCESSION,
WIDOW.

SUSPICION.

See BENAMEE,
EVIDENCE,
FRAUD.

TACKING.

See LIEN.

TALOOKDARY TENURE.

An auction purchaser under Bengal Regulation No. XI of 1822, had the option of cancelling and avoiding a *Talookdary* tenure, a power which he might or might not exercise; and, in a case in which the Government was the purchaser it was *Held*, that, it was incumbent on the Government to take some clear step for the purpose of declaring the avoidance or cancellation of the tenure. That, if the Government had not effectually annulled the tenure before 1842, it had lost its Statutory right to do so, since Regulation XI of 1822, upon which that right depended, was repealed by Act No. 12 of 1841. That in the case under appeal, the Government, whatever might have been its powers, did not, in fact, cancel or destroy the tenure, but left the *Talookdars* in the position in which they

would have been, as of right, under the old law, reducing their tenure from a *Talook* at a fixed, to one at a variable rent; and that a purchaser of the rights of the Government had a right to bring a suit properly framed for the further enhancement of the rent, but was not entitled to disturb the possession of the *Talookdars*, or to let the land over their heads to the highest bidder.—*Khajah Assanoollah* v. *Obhoy Chunder Roy and others*. Vol. 13, p. 317.

TANNAHDARY LANDS.

See CHAKERAN LANDS.

TECHNICALITIES.

See ARBITRATION,
CHILDREN,
DELHI, EX-KING OF,
EVIDENCE,
LA KHIRAJ LANDS,
PRACTICE,
TENDER.

TENANCY IN COMMON.

The estate of one *Fakir Chund* upon the death of his widow, by a Will or Testamentary instrument, passed, one moiety to the family of his brother *Bhowany Pershad*, and the remaining moiety to the family of his brother *Bheekary Das*, the latter family being represented at the time of the widow's decease by *Rewun Pershad*, son of *Mudun Mohun*, one of the sons of *Bheekary Das*, and *Radha Beeby*, widow of *Koonj Behary*, the remaining son of *Bheekary Das*. The widow *Radha Beeby*, as heir of her husband *Koonj Behary*, who died without issue, claimed to be entitled to one-half of the moiety of the estate of *Fakir Chund*, which had descended to the family of *Bheekary Das*, and *Rewun Pershad* disputed her title thereto, and claimed the whole moiety, on the grounds; *First*, that *Koonj Behary* and *Mudun Mohun* were two undivided brothers, and that this share of *Fakir Chund's* estate was undivided, and that by the Hindoo Law, the widow could not claim it, though the heir; and, *Secondly*, that the property never was in the possession of *Koonj Behary*, he having died previously to the widow of *Fakir Chund*, and that by the Hindoo Law, the widow, though his heir, could not claim property not in possession of her deceased husband. *Held*, that, as to the first objection, which turned upon a matter of fact, *viz.*, whether *Koonj Behary* and *Mudun Mohun* were divided brothers or not, the *primâ facie* presumption, where there are no circumstances to affect it, being, that every Hindoo family of this class was an undivided family, and which presumption must prevail unless the circumstances of the case led to a contrary conclusion, the Court thought that a complete division and separation had taken place between *Koonj Behary* and *Mudun Mohun*. That the sons of *Bheekary Das* took as tenants in common, in fact, that they had each of them a vested interest in one-fourth share, not to come into actual enjoyment until the death of the widow; and that, as to the objection, that the widow *Radha Beeby* could not claim any property of her husband which was not in possession at the time of his death—the disputed property being at that period, and for years afterwards, in the possession of the widow of *Fakir Chund*—it had not been shown in this case that the disputed property was not in possession, according to the meaning of the term in the Hindoo Law, nor that the doctrine applied to a property where the husband had a vested interest under a Will or deed, the actual enjoyment thereof being postponed during the lifetime of another. And the Court proceeded to determine the case, on the assumption that there was a complete division between the two brothers, and that the law as to possession by the husband did not, under existing circumstances, bar the widow's claim, and confirmed the judgment of the Lower Appellate Court, which decreed to *Radha Beeby* one-fourth of the estate of *Fakir Chund.—Rewun Persad* v. *Mussumat Radha Beeby*. Vol. 4, p. 137.

TENANCY AT WILL.

In an action of ejectment turning upon the construction and effect to be given to a certain instrument, coupled with a correspondence imported by express reference into that agreement, by which one *Mutty Loll Seal* agreed to vacate and give up to the *East India Company*, two parcels of alluvial land, *Mutty Loll Seal* having previously surrendered to them his proprietary rights therein upon certain conditions, and

in which, the question arose, under the agreement upon which *Mutty Loll Seal* was let into possession of the land, as to what was the nature of the interest possessed by him, and whether it created a tenancy between the parties, and, if so, of what description. *Held*, that, *Mutty Loll Seal* during his life, and his representatives after him, were tenants at will. That the agreement passed no legal interest out of the *East India Company* to *Mutty Loll Seal*. That the Company did not grant or intend to grant as Hindoos; and that if they had so intended they must have failed in their intention, as they could only grant according to law. That the instrument was binding upon the Company as an agreement, and that a Court of Equity would protect *Mutty Loll Seal* and his representatives against any attempt to dispossess them contrary to its stipulations. That, notwithstanding a proviso which the agreement contained for a month's notice, the *East India Company* might have maintained an ejectment the day after the agreement was entered into, because it passed no legal interest, but, that, they could have been instantly restrained from proceedings by a Court of Equity, and that if the agreement could have created a freehold interest it would have been a freehold which would not have ended with *Mutty Loll Seal's* life, because, as he was a Hindoo, no words of inheritance were requisite to continue his interest to his heirs. The decision of the Court that ejectment was maintainable, and that the appellants had no defence to it at law, was, without prejudice to any equitable rights of the appellants, which were to be understood as fully reserved to them.—*Sreemutty Anundomohey Dossee and others* v. *Doe dem, The East India Company*. Vol. 8, p. 43.

TENANT IN TAIL.

See WIDOW.

TENDER.

Respondent, by an *Ikrarnamah*, agreed to pay to the appellant, by certain fixed instalments, a sum of Rs. 25,000 in full settlement and satisfaction of a sum of Rs. 33,589-15-3 due to the appellant by a third party; the appellant agreeing to remit the balance, in consideration of the due payment of the instalments, and the *Ikrarnamah* contained a proviso, to the effect, that in case of failure of payment of the instalments agreed upon, the sum remitted should become due and payable. The respondent alleged that he had duly tendered the instalments to the appellant's Mooktar, but which was disputed by the appellant, who denied the validity of the tender, and claimed to be entitled to recover the remitted money, on account of the respondent having failed to carry out the terms of the *Ikrarnamah*. *Held*, that, there was nothing in the agreement which made the payment of the instalments on the days fixed on as of the essence of the contract. That a strict legal tender was not necessary, and that the Court was satisfied that there had been a *bonâ fide* endeavour on the part of the respondent fairly to perform his engagement. The Court was further of opinion that the nice technicalities of the English law ought not to be applied to the case, but that the Court must look at the agreement with a view to see what the real intention of the parties was, and must enquire whether it appeared upon the evidence that there had been any failure by the respondent in the substantial performance of the contract, and if there had been any default to whom such default was attributable.—*Ram Gopal Mookerjea* v. *Masseyk and another*. Vol. 8, p. 239.

See MORTGAGE.

TENURE.

Lands, belonging to a member of the Civil Service, at Barrisaul in Bengal, held by instruments of grant called *Pottahs*, by which a perpetual right of occupancy was given to the grantee, subject to the payment of certain annual fixed rents, and to forfeiture in case of non-payment, the estate being descendible to heirs, and alienable, saleable and disposable of by the grantee, and being held under a Zemindar to whom the rent was payable, and who held immediately under the Government, by a similar tenure. *Held*, to be of the nature of fee simple; to be an estate of inheritance. That the rules and doctrines of estates of inheritance must be applied to it, and that no part thereof passed by a Will attested by two witnesses only.—*Gardiner* v. *Fell*. Vol. 1, p. 299.

Land in Calcutta held by a British subject, is to be considered as freehold of inheritance, as real property, according to the Law of England, and not as real chattel, or as personal chattel: nor is it to be considered as estate held by Pottah, subject to those regulations mentioned in the exception, but it is freehold of inheritance, according to the acceptation of those terms by the Law of England.—*Freeman* v. *Fairlie*. Vol. 1, p. 305.

See AMARAM TENURE,
CHAKERAN LANDS,
ENHANCEMENT OF RENT,
GHATWALLY TENURE,
KHOTE TENURE,
POLLIAM TENURE,
RESUMPTION,
TALOOKDARY TENURE.

TERM.

See LEASE.

TERMINABLE LEASE.

See LEASE.

TESTAMENTARY DISPOSITION.

See WIDOW,
WILL.

TESTAMENTARY GIFT.

See CHILDREN,
DEED OF GIFT.

TESTAMENTARY POWER.

See ADOPTION,
GIFT OVER,
HINDOO LAW,
WIDOW,
WILL.

THREATS.

See ARBITRATION.

TIME.

Where a sum of money was wanted without the least loss of time, the pressure upon the intended borrower being urgent, and such borrower in the event of a certain person getting him the sum required either within a reasonable time, or within a specified period of eight days, agreed to grant a certain lease. *Held*, that, a delay of nineteen days was unreasonable.—*Fischer* v. *Kamala Naicker*. Vol. 8, p. 170.

See SPECIFIC PERFORMANCE,
TENDER.

TIME BARGAINS.

See WAGER CONTRACT.

TIME CERTAIN.

See INTEREST.

TIME, COMPUTATION OF.

See LIMITATION.

TIME, ESSENCE OF CONTRACT.

See MORTGAGE,
SPECIFIC PERFORMANCE,
TENDER,
TIME.

TIME POLICY.

The question in a suit being, whether in a Time Policy, the vessel being seaworthy at the commencement of the risk, any unseaworthiness, by reason of the insufficiency of the crew at a subsequent time, avoided the Policy. *Held*, that, a Policy of indemnity, being a written instrument, the terms of that instrument must be construed subject to certain conditions, one of which is, that in a Voyage Policy, custom and decision have annexed to that contract a warranty of seaworthiness. That there was no custom and no decision which warranted the Court in saying, that, in a Time Policy any such warranty attaches. That there was no warranty at any intermediate port. That, had it been necessary for the decision of the case, the Court would have been inclined to go to the full extent of the doctrine that there is no warranty of seaworthiness in a Time Policy, but, because, if there was a warranty it was satisfied at the time the voyage commenced, it was unnecessary to decide the point.—*Jenkins and others* v. *Heycock*. Vol. 5, p. 361.

TITLE.

The law in India has not enabled a purchaser of land to look only to the apparent title on the Collector's books, or the presumed title of the owner in possession.—*Varden Seth Sam* v. *Luckpathy Royjee Lallah and others.* Vol. 9, p. 303.

The issue involved was, whether certain lands, which had been taken possession of by the Collector of Madura, to await a judicial decision upon the title thereto, the subject of the suit, belonged to the Zemindary of *Ramnad*, or to the Zemindary of *Yettiapooram*, the lands having been attached and entered into possession of by the Government, (in order that the public peace might be preserved,) and kept under attachment for a period of twenty years, and the same, at the time of the attachment, having been in the possession of the Zemindar of *Yettiapooram*. *Held*, that, though the result of the proceedings had been that neither the plaintiff nor the defendant could make out any clear title, yet as at the time the lands in dispute were attached by the Government, and long prior thereto, they had been in the possession of the Zemindar of *Yettiapooram*, his title should be preferred.—*The Zemindar of Ramnad* v. *The Zemindar of Yettiapooram.* Vol. 10, p. 47.

See ACQUIESCENCE,
EVIDENCE,
FOUJDARY COURT,
LIMITATION,
POSSESSION,
POTTAH,
TORAS GARAS,
WIDOW.

TORAS GARAS.

Held, that, whatever might be the nature of the payments called *Toras garas*, it lay upon the Government asserting the inalienability thereof, to prove that there was something in the nature of the payment which made it incapable of alienation, or of being attached and sold in execution of decree.

Assuming that *Torasgaras huks* began in wrong and violence, still that which had a vicious origin may, in course of time, have become legalized, since long enjoyment is itself a title, as well in favour of the recipient of an annual payment, as of the possession of land itself.

Whatever these payments may have been, they were not at all analogous to the pay of a Military Officer, and they were not personal payments in consideration of services to be personally performed.—*Sumbhoolall Girdhurlall* v. *The Collector of Surat and another.* Vol. 8, p. 1.

TORT.

In the case of damage occasioned by a wrongful act, that is, an act which the law esteems an injury, malice is not a necessary ingredient to the maintenance of an action,

As to a defence, that the act complained of, was the act of the Government, and that in the part which the defendant took in it he acted only as the Officer of the Government, intending to discharge his duty as a public servant with perfect good faith, and with an entire absence of any malice, particular, or general, as against the plaintiffs. If the act which the defendant did, was in itself wrongful, as against the plaintiffs, and produced damage to them, they must have the same remedy by action against the doer, whether the act was his own, spontaneous and unauthorized, or whether it were done by the order of the superior power.

The civil irresponsibility of the supreme power for tortuous acts, could not be maintained with any show of justice, if its agents were not personally responsible for them. In such cases, the Government is morally bound to indemnify its agent, and it is hard on such agent when this obligation is not satisfied; but the right to compensation in the party injured is paramount to this consideration.

The foundation of every action of tort, apart from the question of malice, is, an act wrongful, and which may be qualified legally as an injury.

An act which *primâ facie* would appear to be innocent and lawful, may become tortuous if it invades the right of a third person.

It is essential to an action in tort that the act complained of should, under the circumstances, be legally wrongful as regards the party complaining; that is

it must prejudicially affect him in some legal right; merely that it will, however directly, do him harm in his interests is not enough.

Cases are of daily occurrence in which the lawful exercise of a right operates to the detriment of another, necessarily and directly, without being actionable.

Judgment of the Supreme Court of Calcutta reversed, whereby the plaintiffs were awarded damages amounting to Rupees 6,624 in an action on the case, for damages sustained through an order issued by the defendant, the Superintendent of Marine at Calcutta, an official Government situation under the *East India Company*, whereby the Officers of the Pilot service were prohibited from allowing the steamer "Underwriter" belonging to the plaintiffs, to take any ship in tow of which they had pilotage charge.—*Rogers* v. *Rajendro Dutt and others.* Vol. 8, p. 103.

The principle ordinarily applied to actions of tort is, that the plaintiff is never precluded from recovering ordinary damages by reason of his failing to prove the special damage he has laid, unless the special damage is the gist of the action.

In a suit where the gist of the action is not the special damage, but an unlawful attachment, the plaintiff will not be precluded from recovering ordinary damages for that actionable wrong, even if he wholly fails to prove the special damage laid.

In the case before it, the Court of the Judicial Committee of the Privy Council not considering it desirable to remit the cause for the assessment of damages in India, assessed the damages at Rupees 500.—*Mudhun Mohun Doss and another* v. *Gokul Doss.* Vol. 10, p. 563.

The appellant having obtained a decree against one *Lenaine* alone, its effect, being, simply to direct the restitution by *Lenaine* of 95 logs of timber claimed by the appellant. *Held*, that, Section 2 of Act 23 of 1861, was no bar to a regular suit, in the nature of an action of trover, whereby damages were claimed, to the extent of Rupees 23,304-6-4, including interest from the time admitted as the date when one *Snadden* obtained the 95 logs of timber, brought by the appellant, not only against *Lenaine*, but also against *Snadden*, who was a purchaser of the timber from *Lenaine*, and who was no party to the original suit, no party to the original decree, and in no way bound by it; the object of the second suit, being not restitution of the 95 logs, and therefore not an execution of the decree at all; but, its object being to recover damages for a tort alleged to have been done by both *Lenaine* and *Snadden.*—*Aga Syed Abdool Hoosain* v. *Lenaine and another.* Vol. 13, p. 69.

See DIGNITIES,
LEASE,
WAIVER.

TRANSFER.

See CUTTOOGOOTAGA TENURE,
GIFT INTER VIVOS.

TRANSFER OF INDIA TO CROWN.

See CROWN.

TREES.

See KHOTE TENURE.

TRESPASS.

The true meaning of the 24th Section of 21, Geo. 3, Cap. 70, was, to put the Judges of Native Courts of Justice on the same footing, (as to protection,) as those of English Courts of similar jurisdiction.

An order under the seal of the Foujdary Court to bring a native into that Court to be there dealt with on a criminal charge, is an act of a judicial nature, and whether there was any irregularity or error in it or not would not be punishable by ordinary process at law.

But the protection would clearly not extend to a judicial act done wholly without jurisdiction.

It is well settled that a Judge of a Court of Record in England, with limited jurisdiction, acting judicially, is not liable to an action of trespass for acting without jurisdiction, unless he had the knowledge, or means of knowledge, of which he ought to have availed himself, of that which constitutes the defect of jurisdiction.

It is clear, therefore, that a Judge is not liable in trespass for want of jurisdiction, unless he knew, or ought to have known of the defect, and it lies on

the plaintiff, in every such case, to prove that fact.

Where, therefore, trespass was brought in respect of the arrest of a British-born person, altogether without jurisdiction, it must be shown that the defendant was at some time informed of the European character of the plaintiff, or knew it before, or had such information as to make it incumbent on him to ascertain that fact.

The defendant was competent to give his defence under the general issue,—*Calder* v. *Halket*. Vol. 2, p. 293.

See FALSE IMPRISONMENT,
JURISDICTION.

TRIAL.

See ISSUES,
NEW TRIAL.

TROVER.

New trial directed in an action of trover, the Court below not having weighed all the circumstances in evidence with sufficient accuracy to justify the verdict it had given.—*Muttyloll Seal* v. *O'Dowda*. Vol. 4, p. 382.

In a suit in the nature of an action of trover, to obtain restitution of certain Government Promissory Notes or their value, which was dismissed by the Courts below, the cause was referred back to the Judicial Commissioner of Oude, in order that he might give the necessary directions that it be re-heard by the Civil Judge of the Court of Lucknow, with liberty to either party to add to or amend the pleadings; the Court being of opinion that the facts ought to be further enquired into on proper pleadings and evidence.—*Ikbaloodowlah* v. *Sah Bunarsee Doss and another*. Vol. 12, p. 507.

TRUST.

See BENAMEE,
CONFISCATION,
ESCHEAT,
GIFT INTER VIVOS,
LIEN,
MOHUNT,
RELIGIOUS TRUST,
RESULTING TRUST.

TRUSTEE.

The appellant brought a suit against a person for the recovery of the amount of a bond, alleged to have devolved upon him, the appellant, by the death of an uncle, and the respondent, the brother of the appellant, intervened in the suit, claiming to be entitled to one-half of the bond debt. The appellant compromised matters with the respondent by giving him a six-anna share in the debt in question. The appellant obtained a decree against the bond debtor, and, pending an appeal instituted by the latter, compromised with him without the privity of the respondent, agreeing to accept the amount decreed, without interest, in three years. The judgment-debtor failed to carry out his engagement, and the appellant proceeded to enforce the original decree against him. The respondent instituted a suit against the appellant for the recovery of his six-anna share of the bond debt and interest, charging fraud and collusion between the appellant and the judgment debtor. The appellant admitted the compromise, and that the respondent was entitled to a six-anna share of any sum recovered against the bond debtor, but denied the fraud and collusion, and contended that he had recovered nothing from that person under the decree, and that, until the same was realized the respondent had no claim on him. *Held*, that, the appellant must be considered a trustee for the respondent, and responsible to him merely for a six-anna share of what he had received or might receive from the debtor, or which without his wilful default he might have recovered.—*Doorga Persad Roy Chowdry* v. *Tarra Persad Roy Chowdry*. Vol. 4, p. 452.

See ANNUITY,
CONFISCATION.

TRUST ESTATE.

See WIDOW.

UNAVOIDABLE ACCIDENT.

Where through the culpable, but alleged unintentional neglect of the appellant's Mooktar, certain appeals were struck off the file for want of prosecution, the grounds of appeal not having been filed within the period of six

weeks prescribed by the 6th Section of Act 15 of 1853. *Held*, that, the evidence showed that it was a case of *unavoidable accident*, and within the provisions of the 1st Section of Act 16 of 1845, under which dismissed appeals might in certain specified cases be re-admitted.—*Anundmoyee Dossee and others* v. *Poornoo Chunder Roy and others*. Vol. 9, p. 26; *Sreemutty Dossee Poornoo* v. *Chunder Roy and others*. Vol. 9, p. 38.

UNCLE.

See BANDHOO,
SISTER'S SON.

UNDERTAKING.

In consideration of the Court deciding an appeal before them upon one point only, the Counsel for the appellant, in the presence and with the consent of the son and agent of the appellant, stated to the Court that he would not appeal from such decision. An appeal, however, having in violation of good faith, been brought, the Court of the Judicial Committee of the Privy Council refused to entertain it.

Neither party having brought the fact of the High Court having sent over a certificate mentioning the undertaking, to the notice of the Court until the hearing. Full costs not allowed, but a sum of money *nomine expensarum*.—*Moonshee Ameer Ali* v. *Maharanee Indejeet Singh and others*. Vol. 14, p. 203.

UNDER TENANTS.

Act 10 of 1859, contemplates under tenants as distinct from ryots, and contains provisions relating to both classes.

The 23rd Section of that Act embraces such a suit as, "A suit for the determination of the rate of rent at which a Pottah and Kaboolyat should be given," and, "A suit for arrears of rent due on account of land."—*Baboo Dhunput Singh* v. *Gooman Singh and others*. Vol. 11, p. 433.

See ACT 10 OF 1859,
CONFISCATION,
ENHANCEMENT OF RENT,
SALE FOR ARREARS OF REVENUE.

UNDER TENURES.

See CONFISCATION,
ENHANCEMENT OF RENT,
SALE FOR ARREARS OF REVENUE,
SEBAIT.

UNDIVIDED BROTHERS.

See JOINT UNDIVIDED HINDOO FAMILY,
TENANCY IN COMMON.

UNDIVIDED HINDOO FAMILY.

See JOINT UNDIVIDED HINDOO FAMILY.

UNDUE INFLUENCE.

See ARBITRATION.

UNITY OF HEIRSHIP.

See SELF-ACQUIRED PROPERTY.

UNITY OF POSSESSION.

See WIDOW.

UNOMUTTEE PUTTRO.

See ADOPTION.

UNREGISTERED DEED.

See REGISTRATION.

UNSEAWORTHINESS.

See TIME POLICY.

UNSTAMPED DOCUMENTS.

See STAMPS.

USAGE.

See ALLUVIAL LANDS,
BOUGHT AND SOLD NOTES,
CONVERTS,
CUSTOM,
EVIDENCE,
FACTOR,
FAMILY USAGE OR CUSTOM.
HINDOO LAW,
INTEREST,
MERCANTILE USAGE,
NATIVE CHRISTIANS,
RAJ,
WILL.

USE AND BENEFIT.

See LIFE INTEREST.

USUFRUCT.

See MORTGAGE.

USURY.

A suit was brought for recovery of Rs. 14,969-12-2, rent due under a sub-lease, the defence being, that the sub-lease was only part of other transactions relating to a loan of money, and that the claim was affected by usury, and was void under the 8th and 9th Sections of Bengal Regulation No. XV of 1793. *Held*, that, no question of law arose, but a pure question of fact, *viz.*, whether there was an usurious agreement between the parties to the suit. Judgment of the Lower Appellate Court—confirming the decision of the Court of First Instance, dismissing the suit with costs—confirmed.—*Wise* v. *Kishenkoomar Bous and another*. Vol. 4, p. 201.

An *Ijarah Pottah*, (instrument of lease) sometimes called a *Dye Shoodee Ijarah*, (usufructuary lease). A *Dur Ijarah Kurbooleat* (an under-lease agreement,) and a security Bond executed to secure the re payment by instalments of Rs. 15,000 and interest. *Held*, under the circumstances, not to be a device, within the meaning of Bengal Regulation No. XV of 1793, to elude the rules regarding interest prescribed by that regulation.—*Anundmohun Pal Chowdhoory and others* v. *Kishen Chunder Bannerjea Chowdhoory and others*. Vol. 8, p. 358.

A Bond, lease, and sub-lease held to constitute an entire transaction, and such transaction considered to be one tainted with usury; and an appeal from a decision of the Court of Sudder Dewanny Adawlut at Calcutta—affirming a decision of the additional Judge of Dacca, dismissing a suit brought upon the Bond under Section 9 of Bengal Regulation No. XV of 1793, as an attempt to elude the usury laws,—dismissed.—*Wise* v. *Juggobundhoo Bose*. Vol. 12, p. 477.

See INTEREST,
MORTGAGE.

VAISYAS.

See ADOPTION.

VARIED.

Held, that, part of a decree of a Court of First Instance, though untouched in terms, was, in effect, suspended, by the judgment of the Lower Appellate Court; and that upon a liberal construction of the language of the petition for leave to appeal, this part of the judgment of the Lower Appellate Court might be considered as included within the term *varied*.—*Nawab Umjad Ally Khan* v. *Mussumat Mohumdee Begum and others*. Vol. 11, p. 517.

VELLALA.

See MARRIAGE.

VENDOR AND PURCHASER.

See STOPPAGE IN TRANSITU.

VERBAL POWER TO ADOPT.

See ADOPTION.

VESTED INTEREST.

See TENANCY IN COMMON.

VOLUNTARY PAYMENT.

The appellants, two sisters, who had married individuals of the same family, became entitled, under, what in England would be called a Marriage Settlement, to dower, in the form of a charge on an estate or property which had belonged to a person of the name of *Nyum Chowdry*. He having died in debt, his heirs or representatives were sued by various persons, and, amongst others, by those whom the respondents represented, to recover some very considerable debts alleged to have been due by him, in which suit they obtained judgment, and under that judgment certain other properties were attached and sold, and the judgment in part satisfied. Subsequently they obtained an authority to sell the estate upon which the dower of the appellants was charged. In order to prevent a sale, which would have been mischievous and prejudicial in the highest degree to the rights of the appellants, they, upon a proceeding which they instituted, and under the authority of the Court, not voluntarily, but under protest, and because they were compelled to take that step, in order to prevent the sale of the

estate, paid a large sum of money into Court, and their Pleader, on being asked whether his clients had any objection to the payment thereof to the decree-holder, having answered, "I will bring "a regular suit for setting aside the "summary order rejecting the claim "(to their charge upon the estate) but "the sale cannot be stayed unless the "amount recoverable by the decree-"holder is deposited; I therefore deposit "the amount for the purpose of its "being paid to the decree-holder, and "pray that the said sum be paid to the "decree-holder, and the sale be stayed." *Held*, that, such payment was clearly no voluntary payment; and that the appellants having in a suit brought by them against the respondents for the recovery of the amount paid by them into Court, had such suit determined in their favor on the merits, were clearly entitled to recover this money back again.—*Fatima Khatoon Chowdrain and another* v. *Mahomed Jan Chowdry and others.* Vol. 12, p. 65.

See INTEREST.

WAGER CONTRACT.

In a case upon a contract amounting to a wager upon the average price which opium would fetch at the next Government sale at Calcutta, the plaintiffs having to pay to the defendants the difference between this price, and a sum named per chest, if this price should be below that sum, and the defendants having to pay to the plaintiffs the difference between this price, and that sum, if this price should be above the sum. *Held*, that, by the Common Law of England an action may be maintained on a wager, although the parties had no previous interest in the question on which it is laid, if it be not against the interests or feelings of third persons, and does not lead to indecent evidence, and is not contrary to public policy. That the Statute 8 and 9, Vic. Cap. 109, did not extend to India. That though both parties on the record were Hindoos, yet as no peculiar Hindoo Law was alleged to exist upon the subject, the case must be decided by the Common Law of England. That the mere circumstance that the wager referred to the public revenue did not establish its illegality. That the Court could not say that the contract was contrary to public policy; and that by the Common Law of England the wager in question was not illegal, and might be enforced in a Court of justice.

The Court considered that judicial notice must be taken that the opium to be sold was the property of the Government of India, and that the produce was to form part of the public revenue.—*Ramloll Thackoorseydass and others* v. *Soojumnul Dhondmull and another.* Vol. 4, p. 339.

The appellants and the respondents mutually entered into verbal contracts by way of wager, to the effect, that the respondents would pay to the appellants, such a sum of money as should be equal to five times the amount of the difference between the average price of one chest of Patna opium, of the opium to be sold at the first Government public sale of opium at Calcutta, to be calculated according to the actual price which the whole amount of Patna opium sold at such sale should realize, and the sum of Rupees 1,386, if such average should be less than Rupees 1,386, and that the appellants would pay the respondents a similar sum if such average should exceed the sum of Rupees 1,386. *Held*, that, Act No. 21 of 1848, intituled "An Act for avoiding wagers," was not to be construed as affecting existing contracts, or at all events not those contracts on which actions had already been commenced, for Statutes are *primâ facie* deemed to be prospective only, and the Act contained no words sufficient to show the intention of the Legislature to affect existing rights. That the Court was not satisfied that by Hindoo Law such contracts were void. That upon a full consideration of the evidence as between the parties, the ruling of the Chief Justice in the Lower Court that according to the mutual understanding, each had a right to use the means in his power, one to elevate the market price by bidding and inducing others to bid; the other to depress it by persuading persons not to bid, always supposing that such means were otherwise legal, was a correct one. That efforts made to raise the market by the plaintiffs by bidding by themselves and by agents, were no fraud on the defendants, as such course was, according to the understanding of both parties, to be pursued, and consequently that the intention to use those efforts was not a fraud which rendered the contract void-

able by the defendants. That with respect to the bidding by one of the plaintiffs said to be done merely to enhance the price, it was no fraud on any one. That there is no law which prevents any person buying any quantity of a commodity at any price that he likes, whether to use himself, or to sell again in gross or by retail, or to give away, or to prevent another having it, provided always, that he does not commit the Common Law offence of forestalling and regrating, which this was not, or ingrossing, which the authorities show can be committed only with respect to the necessaries of life; provided also that he makes no false representation in order to effect the purchase. That so far as the doctrine of Conspiracy has been extended, there was no satisfactory authority that the employing several agents cognizant of the beforementioned purposes as well as the plaintiffs, constituted an indictable offence, where there was no *crimen falsi* committed when the commodity is not a necessary of life. That the proceeding by bidding by plaintiffs themselves, or in conjunction with others, was not analogous to *Puffing*, the plaintiffs and their agents being real bidders; and that, under the circumstances the plaintiffs were entitled to recover in the action, and that the Court below was warranted in allowing interest.—*Doolubdass Pettamberdass and others* v. *Ramloll Thackoorseydass and others.* Vol. 5, p. 109.

Certain contracts made prior to the passing of Act No. 21 of 1848, of the nature of wager contracts, the cases arising out of which, the Court remarked, turned upon construction only, upheld, the Court being of opinion that the addition of the words "the 30th of November" after the words "the first public sale," were introduced only as a description, and that the parties had not made a special day of sale essential. —*Chotayloll* v. *Manickchund and others.* Vol. 6, p. 251.

See INTEREST.

WAGES.

See EXECUTION.

WAIVER.

The mere prosecution of an enquiry, especially under a mistaken impression, will not raise a case of election, or amount to a waiver of a tort.—*Nawab Sidhee Nuzur Ally Khan* v. *Rajah Ojoodhyaram Khan.* Vol. 10, p. 540.

See ATTACHMENT,
ARBITRATION,
ISSUES,
SALE FOR ARREARS OF REVENUE.

WARD.

See GUARDIAN AND WARD.

WAREHOUSE.

See RATING.

WARRANTY.

See TIME POLICY.

WASILAT.

In an appeal from a portion of a decree pronounced by three Judges of the Court of Sudder Dewanny Adawlut at Calcutta, acting as Special Commissioners under Bengal Regulation No. III of 1828, passed in a suit, wherein the Government of Bengal claimed a right to resume, or re-assess, certain lands of a considerable extent and value within the Zemindary of Khurruckpore, in the possession of various *Ghatwals*, who held them by *Ghatwally* tenure under the Zemindar; and by which decree, as to the question regarding the right, as between the Zemindar and the *Ghatwals*, to recover from the Bengal Government, large sums which as rents or profits, wasilat, or mesne profits, they had wrongfully or erroneously by means of an invalid resumption, or re-assessment obtained from the *Ghatwals*, the Court decided, that, it was not within the competency of the Court, acting as Special Commissioners, under Bengal Regulation No. III of 1828, Section 3, summarily to determine a question of disputed private rights of this nature, the more especially when one of the parties interested, had not appeared before them, and was probably ignorant that such a question would be mooted in the proceedings, and that the question must be left to be decided by the regular Civil Courts of the country. *Held*, that, the Judges of the Court of Sudder

Dewanny Adawlut, though acting as Special Commissioners, had, from the nature of the subject, jurisdiction to direct the payment of the whole money in dispute, with interest, to the person or persons entitled, but that at the hearing on which the decree under appeal was made, it did not sufficiently appear who was, or were, the person or persons justly entitled to the money; and that an enquiry ought to have been directed by the Court on that subject; and that with this declaration the case would be remitted to India, in order to be further dealt with by the Special Commissioners on that footing.—*Rajah Lelanund Sing* v. *The Government of Bengal and others.* Vol. 9, p. 479.

WASTE.

See PRACTICE, WIDOW.

WIDOW.

The principles which are applied in Courts of Equity in England for securing in the public funds any property to which one person is entitled in possession, and another is entitled in remainder, are not applicable to the case of property in India, where such property is in the possession of a Hindoo widow.

Whether a Hindoo widow and daughter stand in the same situation or not with respect to the right of disposition of property, they at all events stand in the same situation as to the right of administration, and right of enjoyment for their lives; and it is not sufficient to say, that there is one person entitled in possession, and another entitled in remainder, in order to induce the Court to interfere to take the property out of the hands of the individual who is in possession of it; but, it is necessary to show that there is danger to the property from the mode in which the party in possession is dealing with it; and in such case only will the Court interfere.

The Supreme Court of Calcutta remarked, that the right of a Hindoo widow, as heiress of her deceased husband, under the law prevalent in Bengal, to the free and unrestrained possession of the property which she takes by succession, had been declared by the judgment of Lord *Gifford* in the case of *Cossinauth Bysack* v. *Hurrosoondery Dossee*, (Clarke's Rules and Orders Add. Ca. 91) and that such an estate was stated in the judgment of the Supreme Court of Calcutta in the case of *Hurrydoss* v. *Rungunmoney Dossee* to be a restricted, and not a Trust Estate.—*Hurrydoss Dutt* v. *Sreemutty Uppoornah Dossee and another.* Vol. 6, p. 433.

The appellant, on behalf of the Government of Madras, claimed the Zemindary, the subject of the suit, as an escheat to which the Crown became entitled on the death of the widow of the last male Zemindar, of whom there were no heirs in remainder to the widow; and he claimed to have it free and discharged from all incumbrances with which it had been charged by the widow during her enjoyment of it. *Held*, that, under the Hindoo Law a widow, though she takes as heir, takes a special and qualified estate, which, compared with any estate that passes under the English Law by inheritance, is an anomalous estate, that it is a qualified proprietorship, and that only by the principles of the Hindoo Law can the extent and nature of the qualification be determined. That if there be collateral heirs of the husband, the widow cannot of her own will alienate the property, except for special purposes. That for religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband she has a larger power of disposition, than that which she possesses for purely worldly purposes, and that to support an alienation for the last she must show necessity. That an alienation by her which would not otherwise be legitimate, may become so, if made with the consent of the husband's kindred, but that it is not the necessary or logical consequence of this latter proposition, that, in the absence of collateral heirs to her husband, or on their failure, the fetter on the widow's power of alienation altogether drops, and that it is not merely for the protection of the material interests of her husband's relations that the fetter on the widow's power is imposed. That the restrictions on a Hindoo widow's power of alienation are inseparable from her estate, and that their existence does not depend on that of heirs capable of taking on her death. That, if for want of heirs the right to the property, so far as it has not been lawfully disposed of by her, passes to

the Crown, the Crown has the same power which the heir would have, of protecting its interests by impeaching any unauthorized alienation by the widow. That the Crown was not estopped by an act of the Collector pleaded by the respondent, from disputing the title asserted by the respondent, the principles of estoppel not supporting the contention; and that, although particular circumstances may shift the burthen of proof, the general rule is, that it lies upon those who claim under an alienation from a Hindoo female, to show that the transaction was within her limited powers.—*The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah.* Vol. 8, p. 529.

The same principle which has prevailed in the English Courts as to tenants in tail representing the inheritance, would seem to apply to the case of a Hindoo widow; and it is obvious that there would be the greatest possible inconvenience in holding that the succeeding heirs were not bound by a decree fairly and properly obtained against the widow.

According to the principles of Hindoo Law, there is coparceneryship between the different members of a united family, and survivorship following upon it. There is community of interest and unity of possession between all the members of the family, and upon the death of any one of them the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession. But the Law of Partition shows, that as to the separately acquired property of one member of a united family, the other members of that family have neither community of interest, nor unity of possession. The foundation therefore of a right to take such property by survivorship fails; and there are no grounds for postponing the widow's right to any superior right of the coparceners in the undivided property.—*Katama Natchiar* v. *The Rajah of Shivagunga.* Vol. 9, p. 539.

Although, according to the law of the western schools, the widow may have a power of disposing of movable property inherited from her husband, which she has not under the law of Bengal, she is, by the one law, as by the other, restricted from alienating any immovable property which she has so inherited; and on her death the immovable property and the movable, if she has not otherwise disposed of it, pass to the next heirs of her husband.

There is no trace of any distinction between ancestral and acquired property.

The devolution of *Stridhun* from a childless widow is regulated by the nature of the marriage. In the case of a marriage according to one of the four approved forms, her *Stridhun* would, according to the *Mitacshara,* (Chapter 2, Section 11, Art. 11,) go to the collateral heirs of her husband.

The widow has no power of disposition over the immovable property inherited from her husband, whether ancestral or acquired.—*Mussumat Thakoor Deyhee* v. *Rai Baluk Ram and others.* Vol. 11, p. 139.

By the School of Hindoo Law prevalent in Benares, a Hindoo widow has not the power to dispose of immovable property inherited from her husband, to the prejudice of his next heirs.

According to the law of the Benares school, no part of her husband's estate, whether movable or immovable, to which a Hindoo widow succeeds by inheritance, forms part of her *Stridhun,* or particular property. Her power of disposition over both is limited to certain purposes, and, on her death both pass to the next heir of the husband.

The estate of two widows, who take their husbands' property by inheritance is one estate. The right of survivorship is so strong that the survivor takes the whole property, to the exclusion even of daughters of the deceased widow. They are therefore in the strictest sense coparceners. There can be no alienation by one without the consent of the other.

Where a summary suit under Act 19 of 1841, was brought to determine the right to the immediate possession of the estate belonging to a deceased Hindoo inhabitant of Benares, who had died childless, leaving two widows him surviving, he being separated from his brethren, if he had any, and his wealth being self-acquired; and in which summary suit, at the hearing, the Judge pronounced against an alleged Will, and directed that the whole estate should be equally divided between the widows, and that a Curator should carry out that

order without delay; whereupon the property was divided, each widow was put in possession of her share, and one of the widows continued in the separate possession and enjoyment of her share up to the time of her death. *Held*, that, the case was wholly distinguishable from those in which a widow, having a right to an ascertained share upon a partition with coparceners, who had an absolute interest in their shares, is put by them into possession of that share—in which case it might be a question whether her interest did not become absolute—as here the so-called partition was between two widows, each having the limited interest of a Hindoo widow in her husband's estate. That it did not appear that it was made at the suit or on the application of either, but was made by order of a Judge, who in the particular proceeding—one under Act 19 of 1841—had no jurisdiction to determine questions of title, and who could only deal with the right to possession. That it was difficult to see how such a partition could enlarge either widow's estate, so as to give her a disposition which she would not otherwise have had against the next heirs of her husband. That there was no proof of any contract to make a partition, and, as a part of that contract, to release the rights of survivorship, supposing it to have been competent to the widows to enter into such a contract. That there was no jurisdiction in the Court to make a complete partition *in invitam*. That the transaction was merely an arrangement for separate possession and enjoyment, leaving the title to each share unaffected; and, that the acquiescence of the widows in the Judge's proceedings could not do more than bind each not to disturb the other's possession.

The improper alienation of part of her husband's estate cannot affect a widow's right to recover other parts of it from those who have no title to it.

A testamentary disposition, by which she gave to her father and her infant brother the moiety of her husband's estate, of which she had been in possession, made by the widow first dying, set aside—and, decree made to the effect, that the property recovered by the surviving widow under her right of survivorship, should be possessed and enjoyed by her as a widow of a Hindoo husband dying without issue, in the manner prescribed by the Hindoo Law.—*Bhugwandeen Doobey* v. *Myna Bace*. Vol 11, p. 487.

Appellant brought a suit against the respondent impeaching a sale by two Hindoo widows of a portion of the estate of their deceased husband, and the sale deed recited, that the transaction was entered into for the purpose of defraying the debts of the husband, including a particular debt secured by an instalment Bond, and an agreement made in Court, and under the threat of an immediate execution against the estate of the deceased husband; and further recited, that it was executed for the purpose of performing the *Shradh*, &c., of the deceased husband; and in which suit, although the burthen of proof was unquestionably upon the respondent, the party seeking to support the transaction, the respondent gave no evidence in the Court of First Instance, in support thereof, except the sale deed itself, but did in the Appellate Court, upon the hearing of an application for a review of judgment, produce certain unsatisfactory evidence in support of the case, said to have been shut out in the Court of First Instance. *Held*, that, the respondent had not supplied the necessary proof of the existence of the debts, or the necessity for the sale alleged, nor of a consent set up by him as equivalent to such proof; and, that, without impugning the authorities which lay down that a transaction of this kind may become valid by the consent of the husband's kindred, the Court considered that the kindred in such cases must generally be understood to be all those who are likely to be interested in disputing the transaction; and that, at all events, there should be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one, and justified by Hindoo Law.—*Raj Lukhee Dabea* v. *Gokool Chunder Chowdhry*. Vol. 13, p. 209.

Certain alienations of immovable estate having been made by a widow, who had succeeded to her husband's estate, as his heir. *Held*, that, the respondents had failed to support that burthen of proof which the law cast upon them, of showing that the mortgage in dispute was given in any part for the purposes for which a widow was entitled to pledge the estate.

In such a case, whatever be the precise degree of proof required from those

who rely upon the mortgage, there is no doubt that those who take such a security from a person having only a limited power to grant it, are bound to show, *primâ facie* at least, that the money was raised for a legitimate purpose.—*Kooer Goolab Sing and others* v. *Rao Kurun Sing*; and *Rao Kurun Sing* v. *Nawab Mahomed Fyz Ali Khan and others*. Vol. 14, pp. 176, 187.

See ADOPTION,
CONFISCATION,
DOWER,
ESCHEAT,
HINDOO LAW,
JOINT UNDIVIDED HINDOO FAMILY,
LIEN,
LIFE INTEREST, &
LOCUS STANDI,
MAINTENANCE,
POLLIAM TENURE,
SOVEREIGN POWER,
TENANCY IN COMMON,
WILL,
ZEMINDAR.

WIFE.

See DIVORCE,
DOWER,
HUSBAND AND WIFE,
MARRIAGE,
PRIMOGENITURE.

WILL.

Executors possessing a power of control, not expressed to be exercised from time to time, as to letting the children of a Testator into the possession of certain of his property, having once given that permission, their control is at an end.—*Khoorshedjee Manikjee* v. *Mehrwanjee Khoorshedjee and another*. Vol. 1, p. 431.

A devise, made in confirmation of a previous gift of part of a Zemindary, by a Hindoo having no lineal male heirs, in prejudice of his wife, in whom the succession vested in case of no alienation or intestacy, held to be valid.—*Mulras Lachmia* v. *Chalekany Vencata Rama Jagganadha Row*. Vol. 2, p. 54.

The requisites of the 7th Section of the Indian Wills Act No. 25 of 1838, are not sufficiently complied with by a Will being signed by the Testator in the presence of only one witness, though acknowledged by him in the presence of two witnesses present at the same time, one of whom, who had previously signed in the presence of the Testator, acknowledging his signature in the presence of the other witness, and both witnesses subscribing the Will in the presence of the Testator.—*Casement* v. *Fulton et uxor*. Vol. 3, p. 395.

A decree upholding the validity of a Nuncupative Will of a Mahomedan of the Shiah sect, whereby he disposed of a portion amounting to less than one-third of his estate, sustained on appeal.—*Nawab Amin-ood-Dowlah* v. *Syud Roshun Ali Khan and another*. Vol. 5, p. 199.

The strictness of the ancient Hindoo Law has long since been relaxed, and, throughout Bengal, a man, who is the absolute owner of property, may now dispose of it by Will as he pleases, whether it be ancestral or not.

Even in Madras it has been settled that a Will of property not ancestral may be good.

Held, that, under the circumstances, a certain Will and Codicil made by a Hindoo native of Madras, who was without male issue, kinsman or coparcener, were sufficient to dispose of ancestral property within the Madras Presidency.—*Nagalutchmee Ummal* v. *Gopoo Nadaraja Chetty and others*. Vol. 6, p. 309.

It being admitted that the testamentary power exists generally, it is clearly upon the party asserting a special usage or custom limiting such power, to show that such special usage or custom extends to the case in which it is set up, and to allege and prove the limits of the power.

The Will of a Parsee in favour of his wife and daughters upheld, notwithstanding the case set up by a brother of the Testator to the effect, that among Parsees there was a rule, or usage, that no disposition could be made by Will to the total disherison of the heir, or, at all events, that there was such a rule or usage in the Testator's family.—*Modee Kaikhooscrow Hormusjee* v. *Cooverbhaee and others*. Vol. 6, p. 448.

The Hindoo Law, no less than the English Law, points to the intention as the element by which Courts are to be guided in determining the effect of a testamentary disposition, nor is there any difference between the one law and

the other as to the materials from which the intention is to be collected.

Primarily, the words of the Will are to be considered.

But the meaning to be attached to them may be affected by surrounding circumstances, and, where this is the case, those circumstances must be regarded.

Amongst the circumstances thus to be regarded is the law of the country under which the Will is made and its dispositions are to be carried out.

If that law has attached to particular words a particular meaning, or to a particular disposition a particular effect, it must be assumed that the Testator in the dispositions which he has made, had regard to that meaning, or to that effect, unless the language of the Will, or the surrounding circumstances displace that assumption.

Where by a Will the Testator in the first place made an absolute gift of one-fifth of all his property to each of his five sons; but by the eleventh item of the Will, in the event of any of the five sons dying without a son, or a son's son, there was a gift over to such of the other sons or sons' sons as might then be alive. *Held*, that, the intention was that the sons should, in any event, enjoy during their lives the income of their shares of the property. That the Testator had not by his Will imposed upon his sons the obligation of continuing joint in estate. That on the death of one of the co-sharers, his widow was entitled in the usual way to her husband's share of the accumulations of the surplus income which arose during his lifetime, and that the increment arising from such accumulations did not go over with the principal.

The Will of a Testator must *primâ facie*, at least, be taken to refer to that which is the subject of his disposition, the property which he has himself to give; and, if he has evinced his intention to give that property, very strong and clear language must be required to countervail that intention, and subject the property which he has once given to his further disposition.

A Court of construction must found its conclusions upon just reasoning, and not upon mere speculative doubts.—*Sreemutty Soorjeemoney Dossee* v. *Denobundoo Mullick and others*. Vol. 6, p. 526.

A Hindoo inhabitant of Dacca in Bengal having died, leaving large self-acquired estate, consisting of movable and immovable property situate in that province, and having made a Will bequeathing the same. *Held*, that, with reference to the testamentary power of disposition by Hindoos, the extent of this power must be regulated by the Hindoo Law; and that the mere division of income for the convenience probably of the different members of the family, did not amount to the division of the family. And the Court further declared that the true construction of the Will was, that the whole of the Testator's movable and immovable property was well and effectually given for the benefit of the Testator's four sons in his Will named, and their offspring in the male line as a joint family, so long as the family continued joint, subject, however, to the performance of the acts, business, ceremonies, and festivals, and to the provisions for maintenance, in the Will contained, and that the surplus income after answering such performance and provision, was in like manner, well and effectually given for the benefit of the four sons and their offspring, in the male line, as a joint family, so long as the family continued joint; and, it appearing, that, one of the four sons had died leaving three sons, that each of these three sons became entitled to a third part of one-fourth of the property, and of the accumulations thereof. And, it further appearing, that, one of these three grandsons had died leaving no male offspring, and that the family continued joint up to the time of his death, and still continued joint, that upon the death of this grandson the third part of the fourth part of the property and accumulations to which he was entitled passed to the respondent as his widow and heir, who accordingly became and was entitled as such widow and heir to the third part of the fourth part of the property and accumulations.—*Sonatun Bysack* v. *Sreemutty Juggutsoondree Dossee*. Vol. 8, p. 66.

In a suit wherein the substantial questions raised, and at issue, were; *First*, as to the power of a Hindoo resident in the district of Cawnpore, North-West Provinces, to make a testamentary disposition in the nature of a Will, devising and bequeathing self-acquired property; and, *Secondly*, the question of fact, upon the assumption of the existence of such power, whether the Will in question was

sufficiently proved in the suit, and was the free and voluntary act of the Testator, the Court of the Judicial Committee of the Privy Council upheld the Will, remarking, upon one portion of the evidence, that it was clear that in this district a strong feeling prevailed amongst the Brahmins upon the subject of testamentary disposition, which, though at length established at law as to self-acquired property, was opposed to the ancient usages and feelings of the country.—*Nana Nurain Rao* v. *Hurree Punth Bhao and others.* Vol. 9, p. 96.

It is too late to contend that, because the ancient Hindoo treatises make no mention of Wills, a Hindoo cannot make a testamentary disposition of his property.

Decided cases, too numerous to be now questioned, have determined that the testamentary power exists, and may be exercised, at least within the limits which the law prescribes to alienation by gift *inter vivos.*

Accordingly, it has been settled that even in those parts of India which are governed by the stricter law of the *Mitacshara*, a Hindoo without male descendants may dispose, by Will, of his separate and self-acquired property, whether movable or immovable; and that one having male descendants may so dispose of self-acquired property, if movable, subject perhaps to the restriction that he cannot wholly disinherit any one of such descendants.—*Baboo Beer Pertab Sahee* v. *Maharajah Rajender Pertab Sahee.* Vol. 12, p. 1.

The Supreme Court at Calcutta, upon the question of the true construction of the Will of a deceased Hindoo, having declared; *First*, that the Will was well proved (and thereupon ordered the same to be established and the trusts thereof to be carried out); and, *Secondly*, that the respondent, a widow, was not entitled to succeed to her husband's share of the property bequeathed to him by the Will in question; *Thirdly*, that the deceased husband of the widow was entitled absolutely to one-fifth of the accumulations and increase, (if any,) of the joint property, movable and immovable which accrued from the time of the death of the Testator down to the time of his own death, and that his widow and heiress became, on his death, and was entitled to such one-fifth share of the accumulations and increase, and also to the gains and profits, if any, which had accrued upon, or in respect of, the one-fifth share of the accumulations and increase, or which had been made or realized by the use thereof since the death of her husband, the same to be held possessed and enjoyed by her as a Hindoo widow; *Fourthly*, having given to the widow absolutely a certain legacy of Rs. 2,000 with interest; and, *Fifthly*, having referred it to the Master to take the accounts of the accumulations, increase, and profits, and all necessary accounts for carrying out the decree. *Held*, that, it was a question upon the construction of a Will, in which case the meaning of the Testator must be ascertained by the words which he had made use of, having regard to the laws which prevail in India relative to these subjects. That the decree of the Supreme Court was correct. That if the Testator had said nothing about what was to be done with the profits of a business bequeathed in equal shares to his five sons, defeasible under certain conditions, and had made no directions to accumulate, it necessarily followed, that these profits belonged to each of the sons in fifths, and that this fifth would be the property of each son, and would go to his heirs, exactly in the same manner as any other property that he might acquire.—*Bissonauth Chunder and others* v. *Sreemutty Bamasoondery Dossee and others.* Vol. 12, p. 41.

A Will executed by one *Batooknauth*, a resident in Bengal, whose family had come there originally from the North-Western Provinces, and which family it was alleged continued in Bengal under their ancient law, by which the succession to their property was governed by the *Mitacshara*, and not the *Daya bhaga* or *lex loci*, whereby the whole of the Testator's property, except a provision for the maintenance of his childless widow, was given to an undivided first cousin of the Testator, upheld.—*Soorendronath Roy* v. *Mussumat Heeramonee Burmoneah.* Vol. 12, p. 81.

See ACCRETIONS,
ADOPTION,
CHILDREN,
EVIDENCE,
GIFT OVER,
HINDOO LAW,
NUNCUPATIVE WILL,
RES JUDICATA,

TENANCY IN COMMON,
TENURE,
WIDOW.

WITHDRAWAL OF APPEAL.

See LOCUS STANDI,
PRACTICE.

WITHIN THE LIMITS OF THE CHARTER.

See JURISDICTION.

WITNESSES.

See DIGNITIES,
EVIDENCE,
WILL.

WITNESSES, FALSE.

See PRACTICE.

WORDS OF INHERITANCE.

See ENHANCEMENT OF RENT,
POTTAH,
SUNNUD,
TENANCY IN COMMON.

WRITING.

See DIVISION,
SALE FOR ARREARS OF REVENUE.

WUKF.

See ADVERSE POSSESSION,
MAHOMEDAN LAW.

ZEMINDAR.

As to the considerations inducing the East India Company to convert the *Zemindars* into landowners, and to fix a permanent annual *jumma*, or assessment to the Government, according to the existing value, so as to leave to the land proprietors the benefit of all subsequent improvements. See *Raja Lelanund Sing Bahadoor* v. *The Bengal Government.* Vol. 6, p. 101.

The Zemindary of *Shivagunga*, in the district of Madura and Presidency of Madras is admitted to be in the nature of a principality, impartible, and capable of enjoyment by only one member of the family at a time; and the rule of succession to it, is now admitted to be, that of the general Hindoo Law prevalent in that part of India, with such qualifications only as flow from the impartible character of the subject.

In the case of a Zemindar, leaving at the time of his death, widows, daughters, and descendants of daughters, and sons of an elder brother, if the Zemindar, at the time of his death, and his nephews were members of an undivided Hindoo family, and the Zemindary, though impartible, was part of the common family property. *Held*, that, one of the nephews was entitled to succeed to it on the death of his uncle. But that, if on the other hand, the Zemindar at the time of his death was separate in estate from his brother's family, then, the Zemindary ought to pass to one of his widows, and, failing his widows, to a daughter or descendant of a daughter, preferably to nephews; following the course of succession which the law prescribes for separate estate.—*Katama Natchiar* v. *The Rajah of Shivagunga.* Vol. 9, p. 539.

See ACT 10, OF 1859,
ENHANCEMENT OF RENT,
EVIDENCE,
LEASE,
MAINTENANCE,
MALIKANA,
MARRIAGE,
RAJ,
SALE FOR ARREARS OF REVENUE,
WIDOW.

ZEMINDARY.

See BENGAL REGULATION X OF 1800,
ESCHEAT,
FAMILY USAGE OR CUSTOM,
RAJ,
SUCCESSION,
ZEMINDAR.

ZILLAH COURT.

See JUDGMENT IN REM.